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1983

**ANNUAL
REPORT**

TO THE

**ILLINOIS
GENERAL
ASSEMBLY**

**JOINT
COMMITTEE
ON
ADMINISTRATIVE
RULES**



ILLINOIS GENERAL ASSEMBLY

Joint Committee on Administrative Rules

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Springfield, Illinois 62701

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First Vice-Chairman: Senator Arthur L. Berman
Second Vice-Chairman: Senator Prescott E. Bloom
Secretary: Representative Myron Olson

House of Representatives

Woods Bowman
John Cullerton
Carl E. Hawkinson
Ellis Levin
Tom McMaster
Kathleen Wojcik

Senate

Vince Demuzio
Jeremiah E. Joyce
Bob Kustra
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Richard Luft
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Executive Director: Bruce A. Johnson

JOINT COMMITTEE ON ADMINISTRATIVE RULES

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ELLIS LEVIN
TOM MCMASTER
KATHLEEN WOJCIK

Honorable Members of the 83rd General Assembly

Ladies and Gentlemen:

I submit the 1983 Annual Report of the Joint Committee on Administrative Rules for your consideration pursuant to Section 7.10 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1007.10). As required, this report contains the "findings, conclusions and recommendations, including suggested legislation" developed by the Committee as a result of its activities during 1983.

As one of the original members and the fourth Chairman of the Joint Committee, I am proud of the detailed, in-depth, bipartisan reviews of agency rules for which the Committee has become recognized during the past several years. I hope to continue this tradition during my tenure as Chairman.

Too often legislative decisions are made on the basis of inadequate, or even inaccurate, information. Legislative oversight decisions have been particularly afflicted by poor information. In contrast the Committee has become a source of reliable, up-to-date information about agency rules and policies for all of us in the General Assembly.

In 1983, the Committee remained a strong and effective vehicle for legislative oversight of agency policy-making, and has taken major strides in making administrative rules review a major tool of legislative oversight. Nineteen hundred and eighty-three saw both the greatest level of rulemaking activity by agencies and the largest number of objections ever issued by the Committee. The detailed statements of objection to specific agency rules and the suggested legislation presented in this report indicate both the depth and

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the breadth of the Committee's review of agency rules. Aside from continuing its numerous review programs during the past year, the Committee also took an active role in informing and educating the citizens of Illinois about rulemaking. The Committee's compilation and completion of several publication, including the Catalog of Business Regulations, A Citizen's Guide to the Illinois Administrative Procedure Act and its weekly Reg-Flex Report, demonstrate the Committee's commitment to alerting the general public, businesses, and associations to agency rulemaking and informing them of their responsibilities and privileges pursuant to the Illinois Administrative Procedure Act.

Overseeing the activities and policies of state agencies is a task that each of us, as legislators, should take seriously. As you know, many of the complaints and questions we receive from constituents involve agency-made rules, rather than the laws we enact. The Committee is one mechanism we can and should utilize to address these concerns.

Finally, let me thank each of you for your suggestions and input during the past year. Your continued involvement in the activities of the Committee is essential as we represent you in this vital oversight function.

Respectfully,

A handwritten signature in cursive script, appearing to read "Monroe Flinn".

Representative Monroe Flinn
Chairman

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1983 ANNUAL REPORT

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SECTION ONE

COMMITTEE ACTIVITIES

Introduction

This sixth annual report of the Joint Committee on Administrative Rules delineates the activities and recommendations of the Committee during 1983. The extensive work of the Committee throughout the year is illustrated by the diversified yet thoroughly detailed statements of objection and recommendation. These statements indicate the extensive involvement of the Committee in the oversight of the ongoing, day-to-day policy-making activities of state government.

Each of the Committee's activities during 1983 are reviewed in this narrative section of the report. The approach and results of each of the programs and projects of the Committee are discussed. This introduction outlines the basic functions and organization of the Committee, highlights the Committee's major accomplishments in 1983 and legislation affecting the Administrative Procedure Act, and presents an overview of the entire report.

Basic Functions

The most fundamental statement describing the role of the Committee is in Section 7.04(1) of the Administrative Procedure Act: "The function of the Joint Committee shall be the promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules." This statement indicates two directions of the Committee's activities: (1) working with state agencies to improve rulemaking and rules and (2) promoting public understanding of the rulemaking process and of the rules themselves.

The Committee was created in 1977 in a comprehensive amendment to the Illinois Administrative Procedure Act (Public Act 80-1035; House Bill 14). The Illinois Administrative Procedure Act was passed in 1975, but, the General Assembly, recognizing the Act's weaknesses without the existence of a

mechanism for systematic oversight of the rulemaking process and direct legislative involvement, created the Joint Committee on Administrative Rules in an attempt to fill that need.

The legislature's desire for systematic oversight of state agencies' rulemaking and rules is met by the several integrated review programs performed by the Committee. These programs are briefly summarized in this introduction. Additional details on each of the programs are presented in the various sections of the remainder of the Report.

1. REVIEW OF PROPOSED RULEMAKING. Each new rule, amendment to an existing rule and repeal of an existing rule proposed by a state agency is reviewed by the Committee. This review, which must be accomplished within a strict 45-day time period, is primarily intended to ensure that new rules are within the agency's statutory authority and are legally proper.

2. FIVE YEAR REVIEW OF ALL EXISTING RULES. The Illinois Administrative Procedure Act requires the Committee to conduct a systematic review of all current rules of all state agencies, regardless of when the rules were adopted. This program complements the review of proposed rules by providing for an examination of rules which have been in effect for a long time and may no longer be serving the purpose for which they were intended. The primary purpose of this type of review is to bring the existing rules up to date and to reduce or eliminate areas of conflict or overlap between rules.

3. REVIEW OF EMERGENCY AND PEREMPTORY RULEMAKING. To better monitor the rulemaking process, the Committee also reviews emergency and preemptory rules which agencies adopt. Since emergency and preemptory rules are not required to be published for public comment, the Committee carefully reviews these rules to ensure that they comply with the constraints that are placed upon such rulemaking under the Illinois Administrative Procedure Act.

4. COMPLAINT REVIEWS. The Committee frequently receives complaints from the public about specific rules of state agencies. These complaints typically contend that the rule is unauthorized or unreasonable, or has a serious impact on the affected public. Although formal objections based on the

complaints are not usually required, the Committee attempts to answer the questions which have been raised about the rules to focus attention on issues which are of particular concern to the public.

5. PUBLIC ACT REVIEW. To supplement these programs which review agency rules, the Committee also reviews each new public act for its possible affect on rulemaking. The Committee informs agencies when it finds that a new public act may require rulemaking. Then, it monitors the agency's response and actions to adopt the necessary rules. This review is intended to help ensure that acts passed by the legislature are implemented properly and translated into rules whenever necessary.

In a broad sense, each of the Committee's programs is intended to facilitate coordination between the legislative and administrative processes in state government. These programs reflect a growing concern by the legislature that programs and policies be implemented as intended in the authorizing legislation.

Committee Members

The concern and involvement of the members of the Committee in the on-going functions of the Committee's Springfield office is crucial to the effectiveness of the operations of the Joint Committee. Participation in legislative oversight activities does not frequently entail the most visible, or the most personally rewarding tasks required of legislators. Yet Committee members utilize this oversight method to effectively represent constituents and to have an impact on government operations at the level where government programs actually affect the people of the State.

Members of the Committee are appointed by the legislative leaders for two-year terms. Appointments are made during the summer, and officers are elected by the Committee from its members in September of each odd-numbered year. Section 7.02 of the Illinois Administrative Procedure Act delineates these procedures. That section also provides that vacancies are filled by the legislative leader who appointed the individual whose position is vacant.

Legislators who were appointed or reappointed to the Committee during 1983 are:

Appointed by the President of the Senate:

Senator Arthur L. Berman (2nd District, Chicago)
Senator Vince Demuzio (49th District, Carlinville)
Senator Jeremiah E. Joyce (14th District, Chicago)
Senator Richard Luft (46th District, Pekin)

Appointed by the Senate Minority Leader:

Senator Prescott E. Bloom (47th District, Peoria)
Senator Laura Kent Donahue (48th District, Quincy)
Senator Bob Kustra (28th District, Glenview)
Senator John W. Maitland, Jr. (44th District, Bloomington)

Appointed by the Speaker of the House:

Representative Woods Bowman (4th District, Evanston)
Representative John J. Cullerton (7th District, Chicago)
Representative Monroe L. Flinn (114th District, Cahokia)
Representative Ellis B. Levin (5th District, Chicago)

Appointed by the House Minority Leader:

Representative Carl E. Hawkinson (94th District, Galesburg)
Representative A.T. "Tom" McMaster (73rd District, Galva)
Representative Myron J. Olson (70th District, Dixon)
Representative Kathleen Wojcik (45th District, Schaumburg)

Other legislators who served on the Joint Committee during part of 1983 include:

Senator Richard F. Kelly, Jr. (39th District, Hazel Crest)
Representative Jim Reilly (97th District, Jacksonville)
Representative Harry "Bus" Yourell (27th District, Oak Lawn)

The officers of the Committee handle the Committee's business operations and serve as the Personnel Committee for evaluating employee performance. Officers serving the Committee through August of 1983 were:

Chairman: Representative Jim Reilly
First Vice-Chairman: Senator Arthur L. Berman
Second Vice-Chairman: Senator Prescott E. Bloom
Secretary: Representative Harry "Bus" Yourell

New officers were elected by the Committee members in the fall of 1983 as provided in the Administrative Procedure Act. Those officers, who will serve until the fall of 1985, are:

Chairman: Representative Monroe L. Flinn
First Vice-Chairman: Senator Arthur L. Berman
Second Vice-Chairman: Senator Prescott E. Bloom
Secretary: Representative Myron J. Olson

Staffing and Organization

The staff of the Committee is headed by an Executive Director selected by the members of the Committee. The Executive Director is charged with the overall development, management, and operation of the staff of the Committee. He is assisted in the management of the office by two Deputy Directors, one in charge of the Rules Review and Compliance Division, and one in charge of the Policy, Planning and Administration Division. Of the professional staff, approximately one-half are attorneys. The remainder are subject area specialists with training in disciplines such as social services, administration, policy analysis, political studies, and public administration. This multi-disciplinary background of the staff provides a balanced and thorough review of proposed and existing rules.

During the latter part of 1982, the staff of the Joint Committee on Administrative Rules went through a number of significant organizational changes. The changes were designed to increase efficiency in conducting

reviews of agency rules and to eliminate the overlap between the substantive review staff sections. The current organizational structure, as illustrated on the organization chart, TABLE ONE on page 7, helped resolve these duplication problems. Instead of two sections each doing similar tasks, the new structure provides for five basic subject area groups. The reviewers in each of these groups are responsible for both proposed and existing rules classified under their particular subject area. In addition to eliminating overlap, the new structure fosters an increase in reviewer expertise in his or her specific assigned subject area. A more narrow focus of review allows the reviewers to follow developments in federal or state legislation and regulation which are specifically related to their assigned areas. This organizational change has helped improve the efficiency and effectiveness of the staff's operations.

The Rules Review and Compliance Division is responsible for the review of proposed and existing rules. The Policy, Planning and Administration Division investigates complaint reviews, develops and monitors legislation, compiles special Committee projects, and plans and implements Committee organizational policies and objectives.

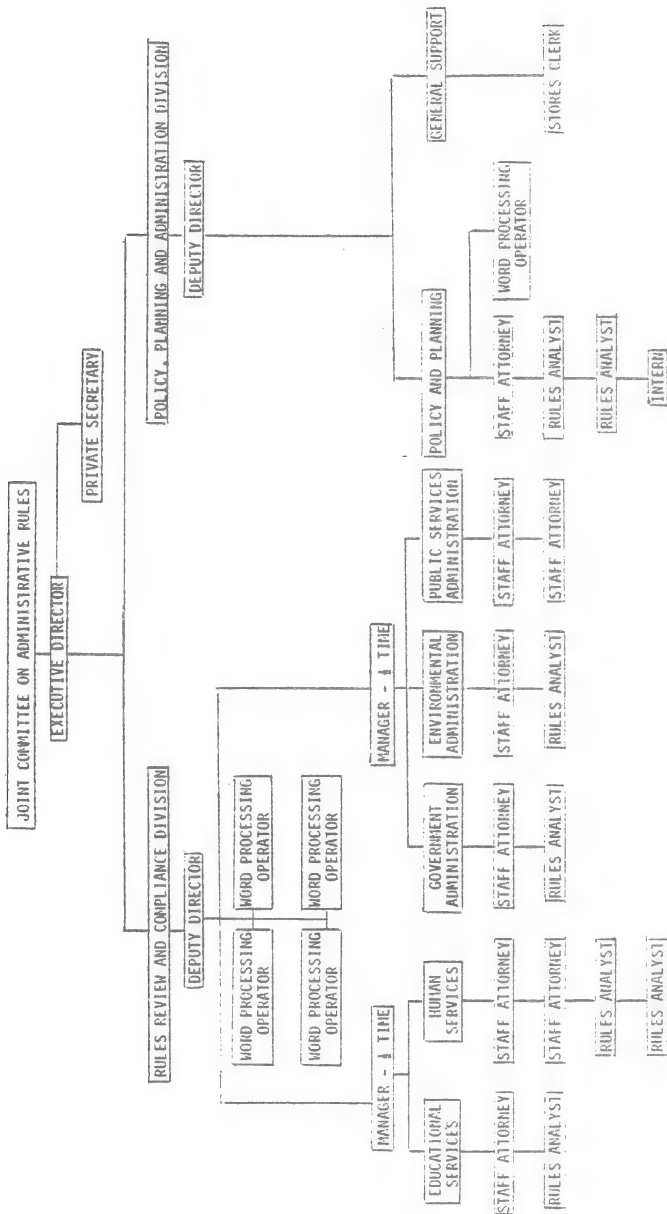
Accomplishments During 1983

The Committee has continued to evolve into a strong and effective vehicle for legislative oversight of agency policy-making during 1983. Not only have the Committee's basic functions been performed in accordance with the Illinois Administrative Procedure Act, but the Committee has maintained a sensitivity to the capabilities of state agencies, and also improved public awareness and information available regarding rulemakings and rules. These accomplishments are demonstrated by examining the following achievements of the Committee during 1983.

1. Completion of the codification of an additional 35% of the state rules.

The Administrative Code Unit of the Secretary of State reports that approximately 60% of all rules were codified by the end of 1983. Only 25% were codified at the end of 1982. During 1983 the Committee advised and assisted

TABLE ONE
ORGANIZATION CHART



the Illinois State Library, the Administrative Code Unit of the Secretary of State and the Legislative Information System to accomplish the codification of these rules. The Committee continues to monitor and support the development of the Illinois Administrative Code scheduled for publication in 1985. The codification process will yield rules which are more accessible to those parties affected by them. Not only will the topical organization of the Illinois Administrative Code facilitate easy location of the main body of rules of interest, regardless of whether the interested person knows which governmental agency regulates the area, but the standardized citation system should alleviate confusion regarding precisely which rule is being reference.

The Committee participated in two Rulemaking and Codification Seminars held during 1983. The Administrative Code Unit of the Secretary of State, the Legislative Information System, and the Joint Committee on Administrative Rules held forums before agency and association representatives to explain the rulemaking process and the goals of the codification process. This joint effort by the Committee, the Administrative Code Unit and the Legislative Information System demonstrates the cooperation necessary to accomplish the timely completion of the Illinois Administrative Code.

2. Compilation and completion of several publications designed to enhance the general public's knowledge of the rulemaking process.

In April of 1983, the 563-page Catalog of Business Regulations was published as part of the Business Regulation Project. The Joint Committee on Administrative Rules, assisted by the Commission on Intergovernmental Cooperation and the Department of Commerce and Community Affairs, compiled this catalog to assist users in the identification of state rules affecting Illinois businesses.

The catalog identifies thirty-three different agencies with more than five hundred sets of rules that impact business. The rules are separated into nine categories similar to those in the 1972 edition of the Standard Industrial Classification (SIC) Manual. The official name of each rule as it appears on the set of rules filed with the Secretary of State, the agency responsible for administration of the rule, and the law that the rule implements are listed in

the catalog. Related state or federal laws, or professional standards affecting the substance of the rule are also included. A synopsis of the scope of the rule, as well as the agency contact address also appear for each of the more than 500 rules included in the Catalog of Business Regulations.

More than 300 copies of this publication have been requested, and the catalog has been praised by national associations as the first compilation of its type produced by any state.

The Committee also published A Citizen's Guide to the Illinois Administrative Procedure Act in March of 1983. This booklet is designed to provide a clear and simple explanation of the Illinois Administrative Procedure Act to even the most novice participants in the rulemaking process. In addition to explaining the significance of the Act and its history, the citizen's guide delineates a section-by-section explanation of every provision of the Illinois Administrative Procedure Act. Other information contained in the publication answers frequently asked questions concerning the citizen's role in the rulemaking process, and suggests some sources of additional information for interested users of the Illinois Administrative Procedure Act. The Committee hopes that A Citizen's Guide to the Illinois Administrative Procedure Act will increase individuals' confidence in their ability to actually influence the substance of agency rules, and, consequently, increase the level of public participation in the rulemaking process.

The Regulatory Flexibility Law, which became effective in Illinois on January 1, 1982, assumes that small businesses may be unduly burdened by rules promulgated by numerous state agencies, and that agencies should provide some flexibility to small businesses regarding compliance and reporting requirements contained in the rules. Accordingly, small businesses are afforded the opportunity to raise issues and suggest alternatives to rules proposed by agencies. Prior to adoption of the amendment, the agency must acknowledge any such comments, and explain why it declines to implement any suggestion made by small businesses.

To assist small businesses in being aware of state rules that may affect them, the Committee publishes the Reg-Flex Report. The Reg-Flex Report is

issued on a weekly basis and is sent to more than 650 individuals, businesses, or associations affected by rules that impact small businesses. Proposals identified as having an effect on small businesses are summarized in the report, and the type of businesses affected by the proposal are indicated. Readers are also given the name or title of an agency person to contact to submit comments or obtain further information regarding the proposal. Announcements of public hearings regarding proposed rules, and informational articles pertaining to the rulemaking process also appear in the Reg-Flex Report.

These educational publications demonstrate the Committee's commitment to alerting the general public to their responsibilities and privileges available pursuant to the Illinois Administrative Procedure Act.

3. Completion of the review of rules in several major subject areas under the five year review program.

The review of rules pertaining to government management of state buildings and construction and maintenance, the industry and labor study of rules governing the operation of financial institutions, and the study of the rules governing the state insurance industry were all completed during 1983. Numerous statements of objection and recommendations, as well as recommended bills resulted from these reviews, which are discussed in more depth on pages 29-42. These results confirm the usefulness of the systematic, subject-by-subject five year review process.

4. Continuation of a vigorous on-going review of all new rules proposed by State agencies.

During 1983, the Committee examined a total of 650 proposed, emergency, and peremptory rules, raising numerous questions with agencies about the legal authority, clarity, and general propriety of the rules. Most of these questions were resolved by the agency agreeing to make the appropriate changes. But in many cases, the Committee issued formal statements of objection and/or recommendation to the rules. The balance between cooperation with agencies and vigorous examination of the rules provided for an effective review

procedure, despite the cumbersome workload and limited time to review each rule.

Public Acts Implemented in 1983 Amending the Illinois Administrative Procedure Act

There were four significant changes to the Illinois Administrative Procedure Act resulting from legislation passed in 1983. One change concerns the adoption by reference of materials extraneous to the agencies. Another pertains to the timeliness of agencies' responses to legislative mandates. And, the other two concern the codification process.

The Illinois Administrative Procedure Act allows agencies to "incorporate by reference" the texts of federal rules and trade association standards within the text of their administrative rules. Public Act 83-638 was introduced as HB 853 by Representative Myron Olson (Dixon). The Act, which became effective on September 21, 1983, modified and renumbered the Section of the Illinois Administrative Procedure Act pertaining to incorporation by reference. Pursuant to Section 6.02 of the Illinois Administrative Procedure Act, agencies will no longer be required to file with either the Secretary of State, Administrative Code Unit or State Library copies of materials incorporated by reference into rules. The Illinois Administrative Procedure Act now provides that a copy of the referenced regulation, rule or standard must be made available to the public upon request. The reference within the rule must fully identify the incorporated matter by location and date, and must state that the rule does not include any later amendments or editions of the material incorporated by reference. The agency adopting the rules shall maintain a copy of the referenced regulation, rule or standard and shall make it available for inspection by the public upon request. This legislation was in response to concerns expressed by agencies regarding the cost of providing a frequently expensive copy of referenced materials at a time when agency budgets barely allot money to purchase an in-house set of materials. PA 83-638 demonstrates the Committee's sensitivity to the agencies', and indeed the State's, fiscal capacity without sacrificing the public's accessibility to documents affecting them. This bill became effective on September 21, 1983.

Representative Ellis Levin (Chicago) introduced HB 1101 to ensure a timely agency response to legislative mandates for rulemaking. As a result, PA 83-529 amended Section 8 of the Illinois Administrative Procedure Act to require agencies to adopt rules in accordance with Section 5 of the Act to implement recently enacted legislation in a "timely and expeditious manner." This should reduce the possibility of an agency irresponsibly ignoring legislative mandates concerning rulemaking. This Public Act went into effect on January 1, 1984.

Representative Woods Bowman (Evanston) sponsored HB 1370 to guarantee the timely codification of all uncodified rules. Prior to the enactment of this bill as PA 83-555, the Illinois Administrative Procedure Act required all rules on file with the Secretary of State and in effect on October 1, 1984 to be codified, but there was no fiat to require the agencies to take responsibility for codification of their own rules. PA 83-555 provides that all uncodified rules will be automatically repealed on October 1, 1984. This new provision in Section 7 of the Illinois Administrative Procedure Act should foster timely adherence to the Secretary of State's codification schedule.

Representative Bowman also sponsored HB 1372, which became PA 83-556. This Public Act changes the publication date of the Illinois Administrative Code from January 1, 1985 to June 1, 1985. This extra five months will allow the adequate time for printing this massive document.

These amendments to the Illinois Administrative Procedure Act will strengthen the legislature's ability to monitor the rulemaking activities of the state agencies empowered to regulate the public.

Report Overview

This report is divided into four basic sections. The first section, pages 1-65, is a narrative discussion of the Committee's activities during 1983. Each of the Committee's major functions and programs, as well as various special projects the Committee has undertaken, are outlined in this section. Also included is an analysis of a number of court cases and Attorney General's

opinions which interpret the Illinois Administrative Procedure Act or affect the rulemaking process, see pages 61-65.

The second section of the report, pages 67-86, is a statistical summary of the Committee's activities and state agencies' rulemaking actions during 1983. A number of tables are included that present breakdowns by agency and types of rulemaking actions. This section indicates not only the workload and general activities of the Committee, but also the general pattern of rulemaking by state agencies.

Each of the specific formal statements of objection issued by the Committee during 1983 are collected in the third section of the report, pages 87-343. These statements, which were published in the Illinois Register when they were issued, are advisory in nature, but often result in significant changes in the rules. The statements are organized by agency along with information concerning the history and outcome of the rulemaking and the objection.

Section four of the report, which begins on page 343, contains the legislation recommended or suggested by the Committee for consideration by the General Assembly during the 83rd General Assembly. Most of these bills are the result of specific reviews of agency rules which uncovered statutory difficulties. A discussion and summary of each bill is presented at the beginning of the section.

REVIEW OF PROPOSED RULEMAKING

The Committee opened files on 585 rulemakings by state agencies during 1983. Due to the large number of second notices received in May and June, the Committee met twice in June; otherwise it met monthly pursuant to Section 7.02(b) of the Illinois Administrative Procedure Act. An average of more than 45 proposals was considered at each of the 13 meetings of the Committee during 1983. The Committee issued 108 formal objections to 45 of these proposals, and an additional 15 recommendations to proposed rulemakings. The Committee's review effected changes in virtually every proposal. These changes ranged from minor drafting and editing technicalities to extensive, substantive revisions.

Nineteen hundred and eighty-three saw the greatest level of rulemaking activity in the history of the Committee. The 585 opened files represents the largest number of proposals considered by the Committee in a given year. This record was partially due to the Department of Corrections' submission of 65 proposals amounting to more than 1,000 pages that would revise the operational rules governing the state's penal system.

This section discusses the general rulemaking process, criteria used by the Committee in evaluating rules, and a summary of some of the more significant objections issued by the Committee in 1983.

General Rulemaking Process

Section 5.01 of the Illinois Administrative Procedure Act governs general rulemaking by agencies. General rulemaking is all rulemaking which is not 1) related solely to internal agency management, 2) an emergency rulemaking as defined by Section 5.02 of the Act, or 3) a peremptory rulemaking as defined by Section 5.03 of the Act.

Agencies are required to give at least 45 days notice of their intended rulemaking to the general public. This period of time is referred to as the

"first notice" period. The first notice period begins on the first day that notice of a proposed rulemaking appears in the Illinois Register.

Section 5.01(a) of the Act sets forth specific requirements governing how first notices must appear in the Illinois Register. Among other things, the agency is required to publish the full text of the proposed rule or the material to be repealed. In addition, there are requirements relative to public comment with which the agency must comply when submitting first notice material for Illinois Register publication.

The primary importance of the first notice provision is to provide an opportunity for comment by those members of the public affected by the proposed rulemaking. Each first notice published in the Illinois Register must contain information as to the time, place, and manner in which persons may comment upon the rulemaking. Agencies are required to consider all public comment received from those who submit a request to comment to the agency within the first 14 days after the first notice has commenced.

Section 5.01 of the Illinois Administrative Procedure Act directs agencies to hold a public hearing whenever "the agency finds that a public hearing would facilitate the submission of views and comments which might not otherwise be submitted." In addition to this agency-initiated public hearing, the Act requires agencies to hold a public hearing whenever the agency receives a request for a public hearing within 14 days of publication of the notice of proposed rulemaking in the Illinois Register "from 25 interested persons, an association representing at least 100 interested persons, the Governor, the Joint Committee on Administrative Rules, or a unit of local government which may be affected."

After the expiration of the first notice period, agencies are required to provide a second notice period. This second notice period allows for the review of the proposed rulemaking by the Committee. This period may consist of a maximum of 45 days.

The agency proposing the rulemaking is required to present to the Committee a written request for commencement of the second notice period.

The specific form of this notice is set forth in Section 5.01(b) of the Act. The second notice period commences on the date that this formal second notice is received, and accepted as being in proper form, by the Committee.

The Committee will not accept a second notice document unless it contains the following information: 1) the text and location of any changes in the proposed rulemaking made during the first notice period, 2) a final regulatory flexibility analysis of the affects of the rulemaking on small businesses, 3) an analysis of the economic and budgetary affects of the proposed rules, if one is requested by the Committee, within 30 days of the commencement of first notice, 4) an evaluation of all comments on the proposed rulemaking received during the first notice period, 5) an analysis of the anticipated effects of the proposed rulemaking, and 6) a justification and rationale for the proposed rulemaking.

After the acceptance of the required second notice submissions, the review of the proposed rules by the Committee begins in earnest. The review of the proposed rules is based upon the criteria set forth in Sections 220.900 and 220.950 of the Operational Rules of the Committee.

Pursuant to the review criteria summarized below, the Committee develops written questions based upon a review of the rules. The agency responses to these questions are evaluated, and any responses which do not appear to adequately address the questions originally raised will be presented in the form of recommendations for Committee action. If the Committee finds that all issues and problems are satisfactorily resolved, the Committee issues a "Certificate of No Objection" which permits agencies to adopt the proposed rules.

In the event that recommendations for Committee action are adopted by the Committee, the agency has 90 days in which to respond to the recommendations. The agency may modify the rules in response to the Committee's objection, refuse to modify the rules, or withdraw the proposed rules. Failure of an agency to respond to the Committee's objection within 90 days results, by operation of law, is an automatic withdrawal of the proposed rules. Both the Committee's statement of objection, and the agency's

response to the objection, are published in the Illinois Register. Agency responses to Committee recommendations, along with evaluations of those responses, are presented to the Committee for review at a scheduled meeting of the Committee subsequent to publication of the agency response in the Illinois Register. Agencies are free to adopt rules subsequent to a response to a Committee recommendation, provided the 45 day second notice period has expired.

Review Criteria

The Committee utilizes the criteria for review listed in Section 220.900 of the Committee's Operational Rules, see Appendix B. The factors which the Committee considers during their systematic review of proposed rulemakings can be summarized as follows:

1. Legal authority for the proposed rulemaking
2. Compliance of the proposed rulemaking with legislative intent and statutory authority
3. Compliance with state and federal constitutional requirements and other law
4. Inclusion of adequate, clear standards and criteria for each exercise of discretionary power
5. Presence of a statement of justification and rationale for the proposed rulemaking
6. Consideration of the economic and budgetary effects of the proposed rulemaking
7. Clarity of the language of the proposed rulemaking
8. Presence of redundancies, grammatical deficiencies and technical errors in the proposed rulemaking
9. Compliance with the requirements of the Illinois Administrative Procedure Act
10. Compliance with the requirements of the Secretary of State's Administrative Code Unit
11. Compliance with additional requirements imposed by state and/or federal law

12. Compliance with the agency's rulemaking requirements
13. Agency responsiveness to public comments received concerning the rulemaking proposal
14. Compliance with the Regulatory Flexibility Law contained in Section 4.03 of the Illinois Administrative Procedure Act

Significant Objections

All statements of objection and recommendation issued by the Committee during 1983 appear in Section Three of this report, see pages 87-342. Several of the those objections are also discussed here because of their especially salient nature.

One 1983 objection was directly related to litigation involving the Department of Public Aid. The consent decree in Illinois Health Care Association v. Miller (77 C1109) required the Department of Public Aid to have in place, by July 1, 1982, a reimbursement reduction procedure for inadequately staffed facilities. Public Aid's proposed rule, Section 140.907(b) of "Reimbursement for Nursing Costs--Geriatric Residents (89 Ill. Adm. Code 140.900-907)," however, provided only an undefined, nonspecific procedure to refer cases of admitted insufficient staffing to the Illinois Department of Public Health. The Committee, at its June meeting, determined that because the proposed rulemaking did not comply with the Consent Decree of United States District Court, the proposal violated the Committee's review criterion requiring that rulemaking proposals comply with case law. This objection appears on page 134 of this report.

In May of 1983 the Committee objected to a rule proposed by the Department of Children and Family Services concerning licensing standards for day care centers. The Child Care Act (Ill. Rev. Stat. 1981, ch. 23, par. 2211 et seq.), which authorized this rulemaking, specifies that the wishes of parents concerning medical treatment must be honored, if those concerns are based upon religious grounds. In response to that provision, the Department's proposed rule made two requirements. First, the Department proposed to require that the day care centers keep on file a

written statement signed by nonimmunized children's parents or guardians verifying that the immunization, physical examinations, and/or medical treatment waivers were based on religious grounds. The Department also proposed to require the center to provide notice to the parents of other children in the home of the presence of children exempted from these medical requirements on religious grounds. The Committee objected to this second requirement. While the notification of the presence of nonimmunized children was intended to protect the health of other children in the day care center, the Committee decided that immunized children were not faced with any health dangers. In fact, this notice provision might have an adverse effect in that parents could assume that the day care center would not be notifying them if there were not a problem or a risk. Such notification could result in parents removing their immunized children from the centers. The Committee therefore objected to this rulemaking proposal on the basis that requiring the center to notify parents of immunized children when children exempted from the health requirements are present in the center exceeded the statutory authority given the Department by the statute. Pages 92-95 contain the complete text of this objection.

At the June 7 meeting of the Committee, two objections were issued to the Department of Public Aid's proposed amendments to the Payment Methodology for Hospitals (89 Ill. Adm. Code 140.101-140.115). One objection was based on the Department's utilization maximums which lacked a formula for modifying the base. The Department explained that the hospitals would be told how the modification occurs and would consider previous years' activity levels in deriving the base. But, because the proposed rule did not contain standards to guide the exercise of the Department's discretion to modify a hospital's base utilization maximum, the Committee objected to the rule. The other objection to this proposal pertained to a discrepancy between this rule and the related federal regulations. The proposed rule only provided for a review of the rate for errors in calculation, while the related federal regulations require the State's Medicaid agency, the Department of Public Aid, to allow individual providers an opportunity to submit additional evidence that would alter the reimbursement rate level. Because the proposal was not in compliance with these federal regulations, the Committee issued a

objection to the rule. The full text of the proposed objection appears on pages 129-131 of this report.

At the September meeting the Committee objected to the Department of Public Aid's rule proposal entitled "Medical Payments--Point Count Guidelines." This objection stems from an amendment to Section 5-5.6a of the Public Aid Code (Ill. Rev. Stat. 1981, ch. 23, par. 5-5.6a) which stated that the cost elements of payments to nursing facilities which were promulgated and effective on June 30, 1981, "shall be null and void on July 1, 1982." On June 30, the Department utilized a point count system to determine reimbursement levels for nursing services for all skilled and intermediate care facilities. Prior to the statutory repeal date of July 1, 1982, the Department did adopt a new nursing assessment system for geriatric patients called the "patient assessment" system. However the point count system is still being used for non-geriatric patients. Because there is no statutory indication that the amendment to Section 5-5.6a was to apply only to geriatric patients, the Committee objected to the proposed amendments to a system that was to become void on July 1, 1982 pursuant to Section 5-5.6a of the Public Aid Code. The full text of this objection is located on page 158-159 of this report.

At its April meeting, the Committee issued nine objections to the Department of Transportation's proposed Rule 2.4 entitled "Suspension of the Rules and Regulations Prescribed by the Department of Transportation for Highway Construction by Contract." Four of these objections were based on the rule's failure to include adequate standards as required by Section 4.02 of the Illinois Administrative Procedure Act. Another objection to this proposal was based on the Department's lack of specific statutory authority to suspend sureties, and also because the act of suspending sureties constitutes an unauthorized usurpation of authority more specifically granted by the General Assembly to the Department of Insurance. Another objection to this proposal was based upon a provision that a surety would be deemed unacceptable if it is not listed in a U.S. Treasury Department Circular. The Committee also objected to this same provision on the basis that the rule impermissibly attempted to incorporate guidelines in violation of the requirements of Section 5.01 of the Illinois Administrative Procedure Act. The other objection issued by the Committee in response to this proposal

concerned the notice and hearing rights of sureties. The Committee objected to this proposed rule because it violated the hearing requirements under Sections 3.04 and 16(c) of the Illinois Administrative Procedure Act, and because the proposal unconstitutionally deprived sureties of due process of law in that it allowed the suspension of a surety without prior notice or hearing. In response to these objections the Department added many standards to their proposal, yet the Committee did not feel their response to the statutory authority and due process issues were adequately addressed. Consequently, the Committee will include in its 1985 legislative package a bill designed to provide greater protection to sureties. The complete text of these objections are found on pages 191-196 of this report.

Proposed amendments to the State Board of Investment's rules governing the Employees' Deferred Compensation Plan received three objections by the Committee at its July meeting. This proposal would have allowed the Board to utilize outside investments managers "to the extent deemed appropriate by the Board." Although the Board disclosed that factors such as cost effectiveness would determine the appropriate extent of utilizing outside investment managers, the Board declined to include any standards in this rule. The Committee consequently objected to this rule on the basis that failure to include the standards used by the Board to determine when employment of outside investment managers would be deemed appropriate constituted a violation of Section 4.02 of the Illinois Administrative Procedure Act, and because the rulemaking did not accurately reflect Board policy. The Committee also objected to three other sections of this proposal because they contained discretionary determinations without any standards by which the Board would exercise that discretion. The rulemaking proposal did not include the standards to be used by the Board in deciding whether to approve the method of sharing expenses, nor did it include the standards to be used in determining restrictions on investment requests. Additionally, the administrative charges would not have been set by administrative rule, despite a ceiling imposed by another administrative rule. Five other sections were objected to on the basis that the Board had failed to adequately define the scope of its fiduciary duties vaguely alluded to in this rulemaking proposal. The Committee determined that failure to include a more definite description of these duties deprived persons affected by this rulemaking of

the specific standards they need to know in order to be adequately informed of the content and effect of the rule. The complete text of these objections are found on pages 223-228 of this report.

In November of 1983 the Committee issued six separate objections to the Department of Nuclear Safety's proposed new rules entitled, "Licensing Persons in the Practice of Medical Radiation Technology." These rules, initially published in the August 5, 1983 Illinois Register, established standards for education, training, experience and continuing education for persons who apply ionizing radiation to human beings. Additionally, these rules prescribed the means for assuring compliance with those standards.

The Committee objected to four sections of the proposed rules because it was determined that the Department lacked the statutory authority to require that an examination be taken by an applicant in order to obtain a license for the practice of medical radiation technology. Two other sections of the rules were objected to because the statute does not grant the Department the authority to charge an application fee for an examination. Additionally, three sections of the rules were objected to because the Committee determined that the Department lacked the statutory authority to suspend or revoke licenses for medical radiation technology. Three more sections of these rules exempted students or certain other individuals from the requirements of the Radiation Protection Act. The Committee objected to these sections because the Radiation Protection Act does not grant the Department the authority to waive any of the legislative mandates contained therein. Twelve other sections of the proposed rulemaking provided for licensing on a temporary or conditional basis. The Committee objected to these sections because the Department lacked the statutory authority to issue conditional or temporary licenses. The other objection issued in response to this proposed rule was based on the Department's lack of statutory authority to require an applicant to meet clinical practice requirements as a condition of licensure for the practice of medical radiation technology.

Unlike other objections summarized in this section of the report, the Department of Nuclear Safety declined to modify this rule to meet the Committee's objections and subsequently adopted these rules. To follow up on

the Committee's belief that the Department has taken regulatory actions not sanctioned by the General Assembly, the Committee is introducing legislation that will render these rules void. Additionally, the Committee is introducing legislation which would require the Department to promulgate rules by January 1, 1985, pursuant to the Illinois Administrative Procedure Act, to administer the accreditation requirements of the "Radiation Protection Act" (Ill. Rev. Stat. 1981, ch. 111½, par. 211 et. seq.). The complete text of these objections appears on pages 119-129 of this report.

As these objections indicate, the review of proposed rules by the Committee impacts not only the agencies proposing rules, but also those affected by the rules. The continuing review of all rulemaking proposals of state agencies provides greater opportunity for significant legislative input into the rulemaking process. These significant objections also illustrate the Committee's effectiveness in dealing with controversial and complex issues.

REVIEW OF EMERGENCY AND PEREMPTORY RULEMAKING

Emergency and preemptory rulemaking were first reviewed by the Committee in the fall of 1979. The Committee strives to ensure only limited exercise of these rulemakings since the procedures allow agencies to bypass the notice and comment period otherwise required by the Illinois Administrative Procedure Act.

State agencies adopted 49 emergency rulemakings and 16 preemptory rulemakings during 1983. The Committee issued 8 objections and 1 recommendation to emergency rules reviewed in 1983. The slight reduction in the number of emergency rules adopted by agencies in 1983 relative to recent years may indicate that the Committee's review is useful in limiting the use of this process by agencies.

Emergency Rulemaking

Section 5.02 of the Illinois Administrative Procedure Act allows agencies confronted with an emergency to promulgate rules without going through the usual notice and comment period. An emergency relative to rulemaking exists when there is a threat to the public interest, safety or welfare. Instead of following the proposed rulemaking requirements, the rule can be filed immediately, take effect within 10 days, and remain in effect for a maximum of 150 days. However, there are restricting qualifications on the use of emergency rulemaking authority. First, an emergency situation must exist which requires the adoption of the rule on fewer days' notice than is required for general rulemaking. Second, the emergency rulemaking must be limited to only provisions in direct response to the actual emergency. Third, the agency cannot adopt an emergency rule having the same effect and purpose as any emergency rule adopted within the previous 24 month period. Finally, despite the agency's ability to forgo the notice and comment period, the Act requires the agency to "take reasonable and appropriate measures to make emergency rules known to the persons who may be affected by them." Thus, the Illinois Administrative Procedure Act does provide agencies the rulemaking flexibility they need to respond to emergency situations, but these limitations serve to constrain that flexibility and protect the public's right to be informed.

The Committee reviews each emergency rulemaking. The Committee's authority to review emergency rules is taken from Section 7.07 of the Act which empowers it to examine any rule. The Committee reviews each emergency rule using the criteria for review set forth in Sections 230.400 and 230.500 of the Joint Committee's Operational Rules. The primary criteria for review are found in Section 230.400. These review criteria, consistent with those in the Illinois Administrative Procedure Act, examine: 1) whether the agency's statement of need for the emergency rule in fact shows the existence of an emergency, 2) whether the agency has shown an adequate reason for not complying with the notice and hearing requirements of the Act, 3) whether the rulemaking is limited only to that which is required by the emergency, 4) whether the agency took action to make the emergency rulemaking known to the affected public, and 5) whether there has been a previous emergency rulemaking with substantially the same purpose and effect in the preceding 24 months.

A recurring problem facing the Committee is that of agencies exercising emergency rulemaking authority to compensate for avoidable administrative failures. In these "self-created emergencies," agencies adopt emergency rules only to compensate for delays or other factors over which the agency has control. The Committee has objected to these types of emergency rulemakings on several occasions. This position was recently upheld by the Illinois Appellate Court in Senn Park Nursing Center v. Miller (455 N.E.2d 162). In that case the Court stated that "it would defeat the purposes of the notice and comment procedures if an agency could dispense with such procedures by enacting an emergency rule where the 'emergency' was created by the agency's failure to follow these procedures in the first place." For further discussion of this decision, see page 62 of this report.

The Committee's objection to the Department of Insurance's Claims Practices emergency rule is an example of a "self-created emergency." This emergency amendment to Part 919 dealt with claim benefits payable under automobile policies covering the total loss of an insured vehicle. The emergency rulemaking required insurance companies to pay sales tax and

transfer fees when the consumer settled for cash as well as when the consumer settled for a replacement vehicle. The Committee objected because the Department was not faced with an emergency situation, and the agency had no justification for not providing notice and comment periods. See page 109 for the complete text of this objection.

A similar objection was issued at the January meeting to the Industrial Commission's emergency Rule 4-(7)(c) governing practice before the Industrial Commission. The emergency rule specified that, in appeals before the Commission, the appealing party's summary of the case and/or brief/abstract must be filed not less than 15 days prior to the date of oral arguments. Here again, the Committee's resulting objection was based on the grounds that this was a "self-created agency emergency." This objection is located on page 222 of this report.

Other objections to emergency rules in 1983 resulted from agency failures to comply with the other criteria for reviewing emergency rules. For example, in January of 1983, the Committee issued an objection to the Pollution Control Board's emergency rule concerning Non-Attainment Area Permit Regulations because the Board had filed an emergency rule with substantially the same purpose and effect within the previous twenty-four months. The complete text of this objection is located on page 229 of this report.

Although the Committee's review of emergency rules focuses mainly on the procedural criteria summarized above, emergency rules are also reviewed for the propriety of their substance. The August, 1983 objection to the Department of Public Aid's emergency amendments to Medical Payment rules is an example of such an objection. The Committee objected to Sections 140.3 and 140.4 of those emergency rules because they provided differing levels of services to AFDC-MANG recipients under the age of 18 and 18 year old AFDC-MANG recipients. This two-tiered service provision violated federal regulations (42 CFR 440.240), which require that the services available to individuals of a medically needy group be equal in amount, duration and scope. See page 156 for the complete text of this objection.

Peremptory Rulemaking

Section 5.03 of the Illinois Administrative Procedure Act governs peremptory rulemaking. Rules adopted pursuant to this section of the Act become effective immediately upon filing with the Secretary of State or at a date required or authorized by the federal law, rules and regulations, or court order as stated in the notice of rulemaking. Notice of rulemaking is published in the Illinois Register and must state specifically the reason for the existence of the peremptory rulemaking situation. The agency is required to file the notice of peremptory rulemaking within 30 days after a change in an agency's rules is required.

The Committee reviews all peremptory rulemaking. The statutory authority for the Committee's review is Section 7.07(a) of the Act which empowers the Committee to "examine any rule." The purpose of the review is to ensure that use of the peremptory rulemaking process is limited to only those situations which meet the requirements of Section 5.03 of the Act.

The review of a peremptory rulemaking is based upon the criteria set forth in Sections 240.500 and 240.600 of the Joint Committee's Operational Rules. The primary criteria for review are detailed in Section 240.500. These criteria include an examination of 1) whether the agency was precluded from complying with the general rulemaking requirements of Section 5.01; 2) whether the agency was required to adopt rules as a direct result of federal law, federal rules and regulations, or court order; 3) whether the rulemaking is limited to what is required by the federal law, federal rules and regulations, or court order; 4) whether the agency has given an adequate reason for not complying with the notice and hearing requirements of the Act; and 5) whether the agency filed the notice within 30 days after the change in the rules was mandated.

The Committee issued no objections regarding peremptory rulemakings during 1983. While the number of objections issued regarding emergency and peremptory rulemakings is not large, the mere fact that the Committee reviews these rulemakings may be having an impact on the actions taken by agencies. Careful review of agencies' use of these extraordinary authorities will continue.

FIVE YEAR REVIEW PROGRAM

Section 7.08 of the Illinois Administrative Procedure Act requires the Committee to review existing rules at least once every five years. The Act requires that this periodic review be conducted according to a classification system which groups all rules by subject area to assure the evaluation of similar rules at the same time. A five year review report therefore normally includes a review of the rules of several different agencies. Each set of rules, however, relates to the same topic, such as consumer protection, vocational and professional education, or land pollution control. The review focuses upon several issues, including organizational and procedural reforms which affect the rules; the merger, modification, or abolition of rules; eliminating obsolete, overlapping or conflicting rules; and the economic and budgetary effects of the rules.

The review process is conducted in several different stages. The initial stage involves requesting specific information from the agencies with rules included in the review. The requests usually include questions concerning statutory authority, costs, and the current need for the rule, among others. This stage may also include a public hearing on the rules. During this stage, the agency staff and the Committee staff often reach agreements concerning the need to correct problems discovered with the rules. Issues which cannot be resolved during this stage are referred to the Committee for action.

During the second stage, a preliminary written report is prepared for consideration by the Committee and agency officials. The report includes written agency responses to staff suggestions and recommendations for Committee action.

The third stage consists of the formal Committee hearing and the preparation of final reports to the Committee. At the hearing, agency representatives present their position on the recommendations, and the Committee votes either to accept or reject the recommendations, which might suggest corrective rulemaking or legislation. This is also the "follow-up" stage for the review. The Committee staff monitors and reports on agency

actions and prepares any necessary reports to insure that the Committee's recommendations are being followed.

TABLE TWO shows the status of those five year reports upon which the Committee is currently at work.

The Committee issued three reports on existing rules during 1983: State Buildings Construction and Maintenance, Financial Institutions, and Business Regulation: Volume V: Insurance. These reports are summarized below.

STATE BUILDINGS CONSTRUCTION AND MAINTENANCE

This report reviewed one set of rules promulgated by the Secretary of State and two sets of rules adopted by the Capital Development Board. Committee raised 133 issues for discussion with the agencies involved. The majority of these issues (67) were resolved by agency agreements to amend the rule to correct the problem. In addition, the Committee issued 6 objections and 2 recommendations to rules where no agreement could be reached with agency representatives. These objections are on pages 288-290, and 292-295. The recommendations are on pages 329-331.

Three issues of major significance emerged during the review. The first involved the abolition of the Illinois Building Authority during the Committee's review of the rules of the Authority. The second issue, incorporation by reference, has been a major issue in nearly all five year review reports. Third, the need for agencies to keep their rules current in relation to statutory and case law became apparent during the Committee's review.

The Illinois Building Authority

The rules of the Illinois Building Authority were scheduled for review as part of the State Buildings report. Shortly after the review was begun, however, the General Assembly passed and the Governor signed Public Act 82-235, entitled "An Act abolishing the Illinois Building Authority and providing for the Capital Development Board to be its successor agency." That Act was effective on January 1, 1982.

TABLE TWO
STATUS OF FIVE-YEAR REVIEW REPORTS

Stage One	Stage Two	Stage Three
<u>Initial Questions And Staff Research</u>	<u>Preliminary Report</u>	<u>Final Report And Follow-Up</u>
EDUCATION AND CULTURAL RESOURCES Special Education and Grants and Scholarships	INDUSTRY AND LABOR Business Regulation Volume Four: III. Racing Board	EDUCATION AND CULTURAL RESOURCES Vocational and Professional Education
EDUCATION AND CULTURAL REOURCES Cultural Resources		INDUSTRY AND LABOR Business Regulation Volume One: Department of Public Health and Agriculture
GOVERNMENT MANAGEMENT Records and Information Management		INDUSTRY AND LABOR Business Regulation Volume Two: Department of Revenue
GOVERNMENT MANAGEMENT State Financial Management		
HUMAN RESOURCES State Adult Institutions		INDUSTRY AND LABOR Business Regulation Volume Three: Miscellaneous
HUMAN RESOURCES Public Health		INDUSTRY AND LABOR Business Regulation Volume Five: Department of Insurance
HUMAN RESOURCES Food Handling and Services		
NATURAL RESOURCES Land Pollution Control		INDUSTRY AND LABOR Labor Laws and Consumer Protection
NATURAL RESOURCES Public Water Supplies		GOVERNMENT MANAGEMENT State Travel
NATURAL RESOURCES Parks and Recreation Management		GOVERNMENT MANAGEMENT State Buildings Construction and Maintenance
PUBLIC UTILITIES Telephone and General Utility		FINANCIAL INSTITUTIONS
TRANSPORTATION Railroad and Mass Transit		NATURAL RESOURCES Wildlife Management

The effect of PA 82-235, as of January 1, 1982, was (1) the Authority ceased to exist, (2) the Capital Development Board succeeded to the rights, powers, and duties of the Authority, and (3) the Board was obligated to conclude the affairs of the Authority. The question was thus raised concerning the status of the Authority's rules. Although in certain cases, the abolition of an agency would result in a complete abolition of the agency's rules, this was not such a case. The transfer of the Authority's functions to the Board suggested that, in essence, the Authority's rules were now the Board's rules, to be observed, enforced, amended or repealed by the Board. This conclusion was strengthened by the nature of the Authority's rules. While some, like those dealing with the organizational structure of the Authority, were in light of P.A. 82-235 devoid of meaning, others defined the continuing legal obligations of the Authority as an issuer of bonds and lessor of real property.

The Committee concluded that Section 7(e) of the Illinois Administrative Procedure Act was designed to deal with the problem presented here. Section 7(e) provides:

In the case of . . . abolishment of agencies by executive order or law, which affects rules on file with the Secretary of State, the State Library shall notify the Governor, the Attorney General, and the agencies involved of the effects upon such rules on file. If the Governor or the agencies involved do not respond to the State Library's notice within 45 days by instructing the State Library to delete or transfer the rules, the State Library may delete or place such rules under the appropriate agency for the purpose of insuring the consistency of the codification scheme and shall notify the Governor, the Attorney General and the agencies involved.

Accordingly, the Committee recommended that the State Library, in conjunction with the Capital Development Board, take action under Section 7(e) of the Illinois Administrative Procedure Act to transfer necessary rules of the Illinois Building Authority to the Capital Development Board, and to delete those rules which are no longer necessary.

Incorporation by Reference

As noted above, the issue of improper incorporation by reference has arisen in nearly all of the five year review reports issued by the Committee. Again in the State Buildings report, the Committee found a number of instances in which the Capital Development Board's incorporation of federal regulations and trade guidelines by reference did not meet the requirements of the Illinois Administrative Procedure Act. For example, Rule 903 refers both to "Best's Key Guide" and to "Treasury Circular 570," a federal publication. Rule 901 also refers to "Best's Key Guide." The Capitol Development Board's Accessibility Standards Illustrated (Rule 4.1.14) incorporates certain professional association standards, "Door Controls - Closers" ANSI A156.5 - 1972. In each of these cases, the Board agreed to amend the rules to meet the incorporation requirements of the Illinois Administrative Procedure Act.

Responsibility of Agencies for Updating Rules

In several instances rules were found to contain phrases which state that, where the rules conflict with law, the law will control. Such a phrase seems at first glance innocuous. It is, after all, a well known legal principle that statutes and court rulings control over agency rules. While such a provision in the rules is unnecessary, it at first does not seem objectionable since the policy stated is true whether or not the phrase is included.

What is of primary concern to the Committee, however, is the fact that use of such language in the rules fails to recognize the responsibility of the agency to keep its rules current in relation to statutory authority. Recognition of that responsibility is central to an efficient regulatory code. Failure to keep rules current in terms of law can lead to such unfortunate results as the situation leading to Illinois Bell v. Allphin (60 Ill.2d 350, 326 N.E.2d 737 (1975)). In that case, the agency took the position that its rules, which clearly awarded a tax exemption, were invalid because they were inconsistent with a statutory provision. Had the agency recognized its responsibility to keep its rules current in relation to the controlling law, over 10 years of litigation would have been avoided.

The responsibility and the expertise for keeping rules current in relation to statutory and case law belongs to the agencies. The public should not be burdened with the responsibility of interpreting the statutes and the rules, and determining whether any conflict exists. Accordingly, in response to the Committee's findings, the Capital Development Board agreed to amend its rules to delete references to possible conflicts with statutory authority.

FINANCIAL INSTITUTIONS

This report examined 20 sets of rules promulgated by several agencies: the Department of Agriculture, the Attorney General, the Commissioner of Banks and Trusts, the State Comptroller, the Department of Financial Institutions, the Savings and Loan Advisory Board, and the Office of the Savings and Loan Commissioner. Over 60% of the 619 issues raised by Committee resulted in an agreement by the agency to amend the rule to correct the problem noted. The Committee issued 23 objections and 13 recommendations to the rules considered in this report. These objections and recommendations are found on pages 261-342, under the appropriate agency. The major findings of the report are discussed below.

Regulatory Efficiency and Cost Effectiveness

During preparation of the Financial Institutions report, it became evident that many of the historic differences between the three major types of financial institutions, banks, savings and loans, and credit unions, have been eroded to the degree that major differences in the services provided by each type of institution are no longer quite so distinct as in the past.

Much of the impetus for modification of the powers of these institutions has come from the federal level. In the past few years there have been two congressional enactments that have significantly contributed to this blurring of the distinctions between banks, savings and loan associations, and credit unions. The first of these was the "Depository Institutions Deregulation Act of 1980," Public Law 96-221. The stated purpose of this federal law was to

facilitate the implementation of monetary policy, to provide for the gradual elimination of all limitations on the rates of interest which are payable on deposits and accounts, and to authorize interest-bearing transaction accounts,

In order to implement these purposes, the federal law made a number of changes in the traditional differences between the three types of financial institutions. One of these changes provides for the phasing out, over a period of time, of what is known as "Regulation Q." Regulation Q was enacted to fix the maximum amounts of interest that could be paid on deposits by financial institutions. The original rationale of the regulation, which allowed savings and loan associations to pay higher interest rates than commercial banks, was to prevent disintermediation from savings and loan associations to commercial banks, in order to protect the financial health of savings and loan organizations and the amount of money available for the home mortgage market. However, Regulation Q has been proven ineffective, in that when interest rates rose above the ceiling imposed by this regulation, depositors took their money out of the savings and loans and invested it in money market funds. Hence, the disintermediation occurred despite, or maybe because of, Regulation Q. For these reasons, Congress has mandated a phase out of this interest differential between savings and loan associations and commercial banks.

The second major provision of the federal law permits insured depository institutions--commercial banks, savings and loan associations, and credit unions--to offer interest-bearing transaction (or checking) accounts to individuals. Prior to this change, commercial banks were forbidden to pay interest on demand deposits.

The third major change found in this federal law expands the asset powers of federal savings and loan associations. Traditionally, savings and loan associations were depositories and home mortgage lenders. This legislation gave federal savings and loan associations authorization to hold 10% of their assets in consumer loans, commercial paper, corporate debt securities and banker acceptances. They were also granted the power to offer trust services on the same basis as national banks.

The second federal enactment that impacts upon the distinction between the various types of financial institutions is the "Garn-St. Germain Depository Institutions Act of 1982," Public Law 99-320. This federal law again addresses the elimination of interest rate differentials first addressed in the "Depository Institutions Deregulation Act of 1980." Section 326,327 of Title III of this federal law eliminates the interest rate differential by January 1, 1984.

Public Law 99-320 continues to expand the powers of federal savings and loan associations to make them more similar to the powers possessed by commercial banks. Section 312 of Title III authorizes all federal associations to accept individual or corporate demand deposit accounts in connection with a corporate, commercial, agricultural or business loan relationship. Section 325 for the first time allows federal savings and loan associations to make commercial loans.

Finally, Public Law 99-320 allows depository institutions to offer a new account equivalent to, and competitive with, money market mutual funds.

All of the changes in the distinctions between the various types of federal financial institutions have a direct bearing on the relationships between financial institutions on the state level. State regulations generally mirror those federal changes not actually mandated to state institutions. This is necessary in order to keep state financial institutions competitive with their federal counterparts.

State chartered banks are regulated by the Commissioner of Banks and Trusts. State chartered savings and loan associations are regulated by the Savings and Loan Commissioner, and state chartered credit unions are regulated by the Department of Financial Institutions. The functions of these financial institutions have become more and more similar, and as noted previously, in many cases the services provided by each type of institutions are the same.

Section 7.08(b)(3) of the Illinois Administrative Procedure Act provides that one of the principal responsibilities of the five year review program of

the Committee is the elimination or phasing out of outdated, overlapping or conflicting regulatory jurisdictions. Pursuant to this statutory mandate, the Committee concluded that the regulatory programs and procedures of the Commissioner of Banks and Trusts, the Commissioner of Savings and Loans, and the Department of Financial Institutions should be studied in an effort to determine whether or not there are any programs or functions of the agencies that may be administered more effectively if consolidated. The expertise for such a study would seem to be particularly that of the three agencies now responsible for this regulation. Therefore, the Committee recommended that a joint study be conducted by the three agencies.

Accuracy and Currency

It is not uncommon, as the Committee's review process moves forward, for agencies to conclude that portions of rules, or even entire sets of rules, are unnecessary. That was the case with several sets of rules reviewed in the Financial Institutions Report.

In the case of the Department of Financial Institutions' "Truth-in-Lending" regulations, the Department concluded that the state rules and regulations are unnecessary, because they merely duplicate the federal requirements. The Department agreed, therefore, to repeal the entire set of rules.

In a similar vein, the Department concluded that its "Rules to Govern the Granting of Reverse Mortgage Loans" are unnecessary because they duplicate other rules of the Department dealing with credit unions. Hence, the Department agreed to repeal these rules.

Article III of the rules of the Savings and Loan Commissioner, "Reports," requires the filing of certain contracts entered into by the savings and loan institutions. Following an examination of this article, in conjunction with the review of all the Savings and Loan Commissioner's rules, the Commissioner determined that Article III could be deleted in its entirety. In addition, Article VII "Bonus Plans" was determined by the Commissioner to be outdated and no longer necessary.

The repeal of these rules fulfills a portion of the Committee's "Sunset" function of reducing the number and bulk of rules. The five year review process has uncovered numerous instances where rules remained on file long after their usefulness, and in some cases, statutory authority had expired. While the primary responsibility for keeping the rules accurate and current remains with the agencies who promulgate the rules, the Committee's findings indicate the need for continuing oversight by the Committee to provide agencies with the impetus to update their rules.

Economic Impact

Of continuing concern to the Committee is the relationship between costs of regulation and the fees charged to those regulated. This concern stems from the mandate of Section 7.04 of the Illinois Administrative Procedure Act, which requires that the Committee evaluate rules "in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects, and public policy." (emphasis added)

In previous five year review reports, the Committee has called to the attention of agencies wide disparities between the cost of regulation and the charges levied upon those regulated (see e.g., the Committee's Final Report: Industry and Labor, Regulation of Occupations, September 1980, and Final Report: Industry and Labor, Business Regulation, Volume III, September 1982). Information gathered in the course of this review revealed some substantial discrepancies between license fees and the cost of regulation in several instances.

In the case of currency exchanges, data provided by the Department of Financial Institutions revealed that fees generated by the Currency Exchange Act totaled approximately \$194,019 for fiscal year 1981. The costs of administering the Act and rules for fiscal year 1981 was \$386,815. Therefore, for fiscal year 1981, revenues generated through fees amounted only to approximately 50% of the costs of administration.

In the case of electronic fund transfers, information supplied by the Office of the Commissioner of Banks and Trusts revealed fees generated

pursuant to the Electronic Fund Transfer Facility Act and associated rules and regulations amounted to approximately \$5,000 for fiscal year 1981, and it was estimated that roughly \$5,000 will also be generated during fiscal year 1982. The Commissioner's office also advised that the cost of administering the Act and rules was approximately \$40,000 for 1981, with a similar cost anticipated for fiscal year 1982. During these two fiscal years, revenues generated through fees amounted to approximately 12½% of the costs of administration.

In the case of the Illinois Credit Union Act, information supplied by the Department of Financial Institutions indicates that annual revenue from fees for fiscal year 1981 was approximately \$704,422. Cost of administration of these rules and the Act was \$897,063 for fiscal year 1981. Additionally, information supplied by the Department shows that the Consumer Credit Division of the Department received total revenue of \$1,282,362 for the fiscal year ending June 30, 1981. Total cost of administration of the division for the fiscal year ending June 30, 1981 was \$411,380.

In the instances cited above, the Committee recommended that the agencies examine the fee structure in relation to the cost of regulation, to determine whether a change in fees might be appropriate.

Lack of Standards and Criteria

One question raised repeatedly in the Financial Institutions Report dealt with the lack of standards and criteria for the exercise of agency discretion in rules whose wording expressed or implied a discretionary power. Throughout the rules, there appear phrases such as, "as approved by the Department," "the Department may . . .," and "the Director may" In the majority of rules in which these phrases appear, there are included no standards to guide those exercising the discretion.

This lack of standards for the exercise of agency discretion is by no means unusual. Failure to include standards for discretion has been a major finding in nearly all of the reports issued thus far by the Committee in its five year review.

In view of the unambiguous language of Section 4.02 of the Illinois Administrative Procedure Act, most agencies, when asked to add standards and criteria for the exercise of discretionary powers, agreed to comply. In those individual instances where agencies refuse to add standards, the reasons given are those which the Committee has heard many times; for example, wide discretion must be retained to meet changing conditions, standards cannot be developed to cover all contingencies, the use of standards unduly restricts the agency. These responses ignore the clear legislative mandate of Section 4.02 of the Illinois Administrative Procedure Act, that rules include standards for the exercise of discretion. Accordingly, the Committee objected to nine rules which lacked adequate standards limiting agency discretion.

BUSINESS REGULATION (VOL. V: INSURANCE)

This report reviewed the rules of the Department of Insurance, the vast majority of which implement the Illinois Insurance Code (Ill. Rev. Stat. 1981, ch. 73, par. 613 et seq.). Committee raised 371 issues for discussion with Department representatives, 197 of which were resolved by the Department's agreement to undertake corrective rulemaking. The Committee issued 11 objections and 10 recommendations addressed to issues that could not be resolved through agreements. These objections are found on pages 274-285 and the recommendations are located on pages 316-327. The major issues (11) addressed in the report are summarized below.

Policy Included in Departmental Bulletins

In September, 1969, the Department of Insurance instituted publication of Illinois Insurance, a periodical designed to keep interested parties informed as to activities of the Department in particular and national trends in insurance regulations in general. While for the most part consisting of articles of interest to the insurance industry, schedules of hearings, and reports of Departmental action in hearings, Committee review of the publication revealed that it occasionally states Departmental positions which are statements of agency policy requiring formal adoption as rules in compliance with the Illinois Administrative Procedure Act.

Accordingly, the Committee recommended that the Department of Insurance cease the practice of issuing interpretive bulletins to set policy, and utilize the procedures of the Illinois Administrative Procedure Act in all future statements of policy.

Lack of Standards

Questions frequently raised in the course of the review of the Department's rules dealt with the lack of standards for the exercise of agency discretion. Appearing throughout the rules are instances in which the Director or the Department is given discretionary authority to approve an action by an insurer, or to take or not take a certain action. Section 4.02 of the Illinois Administrative Procedure Act requires that such rules include the standards which the agency uses in exercising its discretion. (Ill. Rev. Stat. 1981, ch. 127, par. 1004.02)

The frequency of standards issues is not unusual for an agency such as the Department of Insurance, which has many rules that have not been revised since their promulgation. In some cases, rules reviewed in this report were promulgated during the late 1950's or early 1960's. Part of the function of the Committee is to review rules to ensure compliance with the Illinois Administrative Procedure Act and to recommend that the agency take appropriate action to bring its rules into compliance with the Act. In twenty-four instances cited by the Committee, the Department agreed to add appropriate standards. In two instances where the Department refused to add standards, the Committee issued an objection.

The Language of Insurance

Section 7.04(1) of the Illinois Administrative Procedure Act provides that a basic function of the Committee is the "promotion of . . . an understanding on the part of the public" of rules and regulations promulgated by state agencies. Previous five year reviews reveal that lack of simplicity and clarity is a widespread and serious obstacle to public understanding of agency rules.

In many instances, problems of simplicity and clarity are caused by the use of vague or unnecessarily complex terms or bureaucratic terminology that beclouds intended policy. The review of the rules of the Department of Insurance, however, presented difficulties in addition to those normally found in agency rules. This difficulty is rooted in the Department's use in its rules of insurance industry terminology which is not readily understood by the general public.

The Committee recognized that some rules of the Department could not reasonably be clarified by the use of common terms; for example, rules regarding the financial structure and corporate organization of insurance companies, which must be written to comply with accounting or securities regulations. In other instances, however, difficult terminology was used in rules involving the relationship between the insurer and the insured. In these instances the Committee took the position that since these rules affected the public, they should be understandable by the public. In virtually all instances, the Department agreed to define insurance industry terminology which affected the public.

COMPLAINT REVIEW PROGRAM

The authority to review rules based upon complaints is provided to the Committee through the broad language of Sections 7.04 and 7.07 of the Illinois Administrative Procedure Act. Section 7.04 allows the Committee to "undertake studies and investigations concerning rulemaking and agency rules." Section 7.04 also requires the Committee to "monitor and investigate" agency compliance with the provisions of the Illinois Administrative Procedure Act, "make periodic investigations of the rulemaking activities of all state agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy."

Section 7.07 of the Act authorizes the issuance of objections to existing rules and assigns to the Committee the task of examining "any rules for the purpose of determining whether the rule is within the statutory authority upon which it is based, and whether the rule is in proper form."

As outlined in the Committee's Operational Rules, Appendix B, the complaint review process is relatively simple. As complaints are received, the Committee staff conducts an initial review to determine the need for a full complaint investigation. Much of the communication received by the Committee requires only the supplying of basic information, copies of rules or referral to the appropriate agency. The Committee also receives inquiries concerning the applicability of the Illinois Administrative Procedure Act as it relates to certain agencies and policies. These requests generally do not require the same amount of time as do other more complex complaint matters. In situations requiring only a response from the Committee staff, the necessary information is provided. When more difficult situations occur involving a serious legal or substantive issues raised by the public in relation to agency rules, the formal complaint review process is begun.

In 1983, the Committee held formal hearings on three complaints. The first concerned whether certain Environmental Protection Agency guideline letters, which dealt with fugitive dust air pollution, constituted rules. In

January of last year, the Illinois Manufacturer's Association contacted the Committee and questioned whether a guideline letter which its members had received constituted a rule pursuant to the Illinois Administrative Procedure Act. At the July meeting, the Committee voted to send a letter to the Illinois Environmental Protection Agency admonishing the Agency, and informing the agency that although the specific letters which were the subject of the Illinois Manufacturer's Association's correspondence may not constitute rules, the Agency needs to closely watch the substance of such guidelines letters in the future to ensure that no rules or policies are included which are not already on file with the Secretary of State.

The second complaint was brought before the Committee during April of last year. The Illinois Drivers'/Trainers' Association contacted the Committee because the Department of Agriculture had instituted a new rental policy regarding the stabling of horses at the State Fairgrounds without making any rule change. The Committee had a lengthy discussion concerning whether the Department's existing rules are too broad, thereby improperly allowing the policy change without any corresponding change in rules. The Committee did not, however, issue any objection to the Department's existing rules.

Senator Kustra filed the third complaint which was initially discussed at the June meeting of the Joint Committee. Senator Kustra asked whether tolls charged by the Toll Highway Authority need be established by rule. The Committee recommended that tolls should be set by rule and that the pending toll increase be delayed until rulemaking procedures were completed. The Toll Highway Authority did hold a hearing prior to the toll increase but has declined to promulgate rules establishing the fees. Two bills, SB's 247 and 1244, which dealt with this Committee recommendation were sent to the Governor late in 1983. Both contained requirements that notice of proposed toll increases be given in the Illinois Register, that public hearings be held, and that tolls be adopted through the rulemaking provisions of the Illinois Administrative Procedure Act. Both were amendatorily vetoed by the Governor to delete the rulemaking provision, and SB 247 subsequently became law (PA 83-973).

Seven other complaints were resolved or considered in 1983. Included in these were such items as a request for rulemaking to implement education legislation, a challenge to the statutory authority for rules of the Department of Corrections, a challenge to policy change by the Department on Aging, and a nursing school's problem with the Department of Registration and Education's degree requirements. Two have been transferred to the Rules Review and Compliance Division and will be dealt with in the five-year review program. One is pending, awaiting program rulemaking. One issue is still being studied, and three have been resolved. A summary of these follows.

A state agency contacted the Joint Committee to ask whether the Comptroller's CUSAS Manual fits the definition of a rule and should be so promulgated. And, an individual questioned the adequacy of certain rules of the Illinois Department of Corrections, including proper statutory authority and compliance with legislative intent. Both issues were transferred to Rules Review and Compliance Division so that the substance of the complaint could be included in the five-year review of the Comptroller's and the Department of Corrections' existing rules.

An association requested that rulemaking be initiated by the State Board of Education and the Illinois Community College Board, as a result of PA 82-998. This Public Act amended the School Code concerning classes for adults and youths whose schooling has been interrupted, and set forth conditions for State reimbursement (Ill. Rev. Stat. 1981, ch. 122, par. 10-22.20). These agencies had already been asked, in the course of the Committee's public act review activities, to promulgate rules. As a result of this complaint, they were again contacted and the State Board of Education agreed to initiate appropriate rulemaking. The Committee is monitoring the development of these rules, and will work with the complainant when rules are proposed.

A community care vendor complained about a policy change by the Department on Aging which stated that service vendors could no longer serve as Case Coordination Units. Staff worked together to identify the issues raised and include them in the review of pertinent rules that were

subsequently proposed. The adopted rules were found sufficient concerning these issues.

A nursing school was concerned with the legality of the Department of Registration and Education rules which require that nursing school faculty have graduate degrees. After a discussion with the Committee, the agency offered to delay the effective date of the rule for schools showing good faith attempt to comply with the rules.

Representative Koehler was concerned with the legality of the seal requirement in the Department of Registration and Education's rules concerning Registered Professional Engineers. Upon holding discussions with the Department, the staff informed Representative Koehler that the rules appeared to comply with the authorizing statute.

An association complained that the Department of Agriculture's Barn Rental Agreement Contract set forth agency policy not contained in the Department of Agriculture's Rules entitled "Non-Fair Space Rental." At this time, the outcome of this complaint is still pending.

PUBLIC ACT REVIEW

Section 7.05(3) of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1007.05(3)) provides that the Committee "shall maintain a review program to study the impact of legislative changes . . . on agency rules and rulemaking." The Committee has developed its public act review program to carry out this responsibility. Under this program, Committee staff reviews each new public act to determine whether responsive rulemaking may be required. Having determined that rulemaking may be necessary, the Committee notifies the agency involved to obtain information concerning the agency's intended response to the legislation. If the agency agrees that rulemaking is necessary, the Committee monitors the rulemaking to ensure that the rules are consistent with the public act.

A primary goal of the program is to ensure that agencies implement new legislation and adopt necessary rules as expeditiously as possible. Indeed, prompt agency rulemaking in response to legislation is now required by statute. Public Act 83-529, which was approved by the Governor on September 17, 1983, and is effective January 1, 1984, provides, "An agency shall, in accordance with Section 5 [of the Illinois Administrative Procedure Act], adopt rules which implement recently enacted legislation of the General Assembly in a timely and expeditious manner."

Committee staff has thus far reviewed 1,104 public acts passed during the Eighty-third General Assembly. Of this number, 214 may, in Committee staff's opinion, require agency rulemaking.

The following tables summarize the Committee's findings. TABLE THREE indicates for each agency the number of public acts which may require rulemaking, as well as the number of rulemakings which the agency has initiated. TABLE FOUR lists each public act which may require rulemaking, the subject of the act, the agency involved, and the agency's response to the Committee's determination that rulemaking may be required.

TABLE THREE: 1983 PUBLIC ACTS WHICH
MAY REQUIRE RULEMAKING BY AGENCY

	Number of Public Acts Which May Require Rulemaking	Number of Rulemakings Initiated
<u>Code Departments</u>		
Aging	1	0
Agriculture	16	10
Central Management Services	8	2
Children and Family Services	8	2
Commerce and Community Affairs	5	0
Conservation	6	2
Energy and Natural Resources	1	0
Environmental Protection Agency	3	2
Human Rights	2	0
Insurance	8	0
Labor	7	4
Law Enforcement	2	0
Mental Health and Developmental Disabilities	7	1
Nuclear Safety	1	0
Public Aid	12	6
Public Health	17	5
Registration and Education	16	5
Revenue	13	2
Transportation	6	0
Veterans Affairs	1	0
<u>Elected Officials</u>		
Attorney General	3	0
Comptroller	3	1
Secretary of State	12	4
Secretary of State's Merit Commission	1	1
<u>Other Agencies</u>		
Commerce Commission	5	3
Dangerous Drugs Commission	2	0
State Fire Marshal	1	0
Illinois-Indiana Bi-State Commission	1	0
Industrial Commission	5	0
Pollution Control Board	6	0
Racing Board	3	1
State Employees' Retirement System	2	1
Local Governmental Law Enforcement Officers Training Board	1	1
Law Enforcement Merit Board	2	2

TABLE THREE: 1983 PUBLIC ACTS WHICH
MAY REQUIRE RULEMAKING BY AGENCY (con't)

	Number of Public Acts Which May Require Rulemaking	Number of Rulemakings Initiated
Prisoner Review Board	1	0
Commissioner of Banks and Trusts	1	0
Court of Claims	1	0
Chicago World's Fair Authority	1	0
Citizens Utility Board	1	0
Midwest Radioactive Waste Commission	1	0
State Labor Relations Board	1	0
Local Labor Relations Board	1	0
Educational Labor Relations Board	1	0
State Board of Elections	1	0
Nature Preserves Commission	1	0
<u>Educational Agencies</u>		
State Board of Education	7	2
State Universities Retirement System	2	0
Community College Board	3	0
State Scholarship Commission	1	0
Teachers' Retirement System	1	0
Board of Higher Education	2	0
TOTAL	214	57

TABLE FOUR: PUBLIC ACTS WHICH MAY REQUIRE RULEMAKING

<u>Public Act</u>	<u>Subject</u>	<u>Agency</u>	<u>Response</u>
83-1	Unemployment - Contribution and Benefits	Department of Labor	Rules Proposed
83-9	Surplus Property Revolving Fund	Central Management Services	No Response
83-12	Vehicle Fuel Tax and Registration Fee	Department of Transportation	No Response
83-13	Insurance - Valuation and Non-Forfeiture	Department of Insurance	Agreement
83-14	Income/Sales Tax Increase	Department of Revenue	No Response
83-17	Public Aid - Hospital Payment	Department of Public Aid	Rules Proposed
83-20	Police Training	Local Governmental Law Enforcement Officers Training Board	Rules Proposed
83-30	Pension - Increases Contribution	State Employees Retirement System	Does not believe rules are necessary
83-34	Income-Tax Interest Withholding	Department of Revenue	Does not believe rules are necessary
83-35	Tree Experts		Rules Proposed
83-41	Barbering - Regulation	Department of Registration and Education	Agreement
83-42	Group Insurance	Department of Registration and Education	No Response
83-44	Securities - Exemptions	Central Management Services	Rules Proposed
83-48	Community Colleges Credit Hour Grants	Secretary of State	No Response
83-49	Purchase - Data Processing Equipment	Community College Board	No Response
83-50	School Code - Title I Deadline	Central Management Services	No Response
83-51	Pregnancy Act - Director - Duties	State Board of Education	Agreement
83-54	State & County Fairs	Department of Public Health	Rules Proposed
83-55	MFN - Sales Tax - County Fairs	Department of Agriculture	No Response
83-56	Driver's License Requirements	Department of Revenue	Does not believe rules are necessary
83-58	Hunting and Fishing Licenses - Disabled Veterans	Secretary of State	Agreement
83-60	Disabled Veterans - Camping Fee Exemption	Department of Conservation	Agreement
83-63	Laboratory Service Fees	Department of Conservation	Rules Proposed
83-67	Protest Tax Interest	Department of Agriculture	Rules Proposed
83-68	Grain Insurance Act	Department of Revenue	Rules Proposed
83-71	Unemployment Insurance - Higher Education	Department of Agriculture	Rules Proposed
83-73	Shorthand Reporters Act	Department of Labor	Rules Proposed
83-75	Public Aid - Claim Reimbursement	Department of Registration and Education	Rules Proposed
		Department of Public Aid	No Response

TABLE FOUR: PUBLIC ACTS WHICH MAY REQUIRE RULEMAKING (cont'd)

<u>Public Act</u>	<u>Subject</u>	<u>Agency</u>	<u>Response</u>
83-78	Grant Aid - Availability	Department of Mental Health and Developmental Disabilities	No Response
83-79	Increases Bond Limit	Illinois State Scholarship Commission	Does not believe rules are necessary
83-80	Soybean Marketing Act - Procedure	Department of Agriculture	Rules Proposed
83-81	Apple and Peach Marketing - Procedure	Department of Agriculture	Rules Proposed
83-82	Egg Marketing - Procedure	Department of Agriculture	Rules Proposed
83-84	Beef Marketing Development Act	Illinois Beef Council	No Response
83-85	Grain Warehouses - Injunction	Department of Agriculture	Agreement
83-86	Use Tax & Service Tax - Credit	Department of Revenue	Rules Proposed
83-87	Galactosemia Testing	Department of Public Health	Rules Proposed
83-88	Case Management	Department of Mental Health and Developmental Disabilities	No Response
83-89	Civil Rights - Sexual Harassment	Department of Human Rights	Does not believe rules are necessary
83-90	State Agencies - Job Sharing	Central Management Services	No Response
83-91	Human Rights - Sexual Harassment	Department of Human Rights	Does not believe rules are necessary
83-92	Agricultural Aircraft	Department of Transportation	No Response
83-94	Field Sanitation Act	Department of Public Health	Agreement
83-97	Visiting Medical Professors	Department of Registration and Education	No Response
83-99	Prior Fiscal Year Payments	Department of Public Health	Agreement
83-102	Grade A Milk Act	Department of Public Health	Rules Proposed
83-103	Insurance - Outside License Testing	Department of Insurance	Rules Proposed
83-104	Labor - Training Courses	Department of Labor	No Response
83-114	Replacement Vehicle Tax	Department of Revenue	No Response
83-125	Day Care - Release of Children	Department of Children and Family Services	No Response
83-126	Child Care Act - Day Care Agency	Department of Children and Family Services	Rules Proposed
83-128	Bingo License - Labor Union	Department of Revenue	Rules Proposed
83-130	Library - Grant Anticipation Notes	Secretary of State	No Response
83-137	Public Aid - Inpatient Hospital	Department of Public Aid	Does not believe rules are necessary
83-138	Foster Homes - Limit	Department of Children and Family Services	No Response
			Agreement

TABLE FOUR: PUBLIC ACTS WHICH MAY REQUIRE RULEMAKING (cont'd)

<u>Public Act</u>	<u>Subject</u>	<u>Agency</u>	<u>Response</u>
83-142	Comptroller - Imprest Accounts	Comptroller	Agreement
83-144	Public Aid - Sickle Cell Anemia	Department of Public Aid	No Response
83-147	Racing Board - Prohibits Licensing	Illinois Racing Board	Does not believe rules are necessary
83-148	Secretary of State - Information Release	Secretary of State	Rules Proposed
83-158	Bi-State Planning	Illinois-Indiana Bi-State Commission	No Response
83-161	Controlled Substance Schedules	Dangerous Drugs Commission	No Response
83-163	State Finance Administration	Comptroller	Rules Proposed
83-164	Public Aid-Child Support Reimbursement	Department of Public Aid	No Response
83-170	Fish Code - Number of Poles	Department of Conservation	Agreement
83-175	Salvage Warehouse - Responsibility	Department of Public Health	Agreement
83-177	Elections- Independent Candidates	Board of Elections	Rules Proposed
83-180	Reimbursement Procedures	Department of Children and Family Services	Agreement
83-189	Workers' Compensation - Liability Exposure	Department of Insurance	No Response
83-191	Real Estate Licensing Act	Department of Registration and Education	Agreement
83-193	Administration of County Aid	Department of Public Aid	Rules Proposed
83-195	Transient Merchants - Sales Tax	Department of Revenue	No Response
83-208	Report Supervision	Secretary of State	Rules Proposed
83-213	Vehicle Code - Pneumatic Tires	Department of Transportation	No Response
83-218	Purchasing - Multiple Year Leases	Central Management Services	No Response
83-222	Clinical Labs - Rules	Department of Public Health	Agreement
83-230	Funeral Directors - Licensing	Department of Registration and Education	Agreement
83-240	Toxic Substance Disclosure	Department of Labor	Rules Proposed
83-241	Public Utilities - Fuel Adjustment	Illinois Commerce Commission	Rules Proposed
83-252	Gifted Children	State Board of Education	Rules Proposed
83-255	Hospital Act - Research	Department of Public Health	Agreement
83-256	Travel Regulations	State Board of Education	Agreement
83-261	Higher Education - Custodial Accounts	Universities Retirement System	Does not believe rules are necessary
83-262	Civil Penalties - Realtor	Department of Registration and Education	Does not believe rules are necessary

TABLE FOUR: PUBLIC ACTS WHICH MAY REQUIRE RULEMAKING (cont'd)

<u>Public Act</u>	<u>Subject</u>	<u>Agency</u>	<u>Response</u>
83-265	Weights and Measures - License Fee	Department of Agriculture Environmental Protection Agency	Agreement Rules Proposed
83-273	Water Chlorination		
83-282	Civil Administrative Code - Historical Sites		
83-283	Agent Orange	Department of Conservation Department of Commerce and Community Affairs	Agreement
83-285	Criminal Identification - Dental Records	Department of Law Enforcement	No Response
83-286	Experimental Cancer Treatment	Department of Public Health	No Response
83-287	Computer Program Grants	State Board of Education	Agreement
83-291	Public Accounting	Department of Registration and Education	Agreement
83-299	School Bus Identification	Department of Transportation	Rules Proposed
83-316	State Employees - Compensation Claims	Central Management Services	No Response
83-319	Network for Opportunity Act	Department of Commerce and Community Affairs	No Response
83-321	Revenue - Intent to Equalize	Department of Revenue	No Response
83-330	Bingo - Prize Ceiling	Department of Revenue	Does not believe rules are necessary
83-360	Workers' Compensation - Terminology	Illinois Industrial Commission	No Response
83-361	Workers' Occupational Diseases - Terminology	Illinois Industrial Commission	Agreement
83-365	Business Take-over - Repeal	Secretary of State	Agreement
83-396	Unemployment Insurance - Seek Employment	Department of Labor	No Response
83-398	Boxing Contest	Department of Registration and Education	No Response
83-399	Drugs	Department of Public Aid	No Response
83-400	Drugs	Department of Public Aid	Rules Proposed
83-405	Vehicle Code - Extended Warranty	Secretary of State	Agreement
83-411	Library Systems Act	Secretary of State	Rules Proposed
83-421	Teacher Scholarships	State Board of Education	Agreement
83-425	Refuse Disposal Facilities	Pollution Control Board	Agreement
83-429	Physical Therapists - Licensing	Department of Registration and Education	Agreement
83-430	Pensions - State Employees	State Employees Retirement System	Rules Proposed
83-433	State Police - Officer Ranks	Law Enforcement Merit Board	Rules Proposed
83-435	Engineers - Revoke Certificate	Department of Registration and Education	Agreement

TABLE FOUR: PUBLIC ACTS WHICH MAY REQUIRE RULEMAKING (cont'd)

<u>Public Act</u>	<u>Subject</u>	<u>Agency</u>	<u>Response</u>
83-437	Child Care - Immunization	Department of Children and Family Services	Rules Proposed
83-441	Personnel Code - Layoffs	Secretary of State's Merit Commission	Rules Proposed
83-444	Community Colleges - Counseling	Community College Board	No Response
83-446	Forestry Development Act	Department of Conservation	Rules Proposed
83-457	Hospice Licensing	Department of Public Health	Agreement
83-486	Teachers' - Salary	Teachers' Retirement System	No Response
83-489	Workers' Compensation - Insolvency	Illinois Industrial Commission	Agreement
83-495	Rape Plans - Hospitals	Department of Public Health	Does not believe rules are necessary
83-500	Rape Victims - Vitullo Kits	Department of Law Enforcement	No Response
83-501	MFN - State Universities - Automatic Pension Increase	Universities Retirement System	Does not believe rules are necessary
83-504	State Police - Suspended Officers	Law Enforcement Merit Board	Rules Proposed
83-529	IAPA - Expeditious Rulemaking	Joint Committee on Administrative Rules	Agreement
83-547	Delegation of Powers	Environmental Protection Agency/ Pollution Control Board	Agreement
83-557	Service Occupation and Use Tax	Department of Revenue	No Response
83-567	Nursing - Drug Administration	Department of Registration and Education	Agreement
83-578	Mental Health - Responsible Relatives	Department of Mental Health and Developmental Disabilities	Rules Proposed
83-586	Fertilizer Storage Facilities	Department of Agriculture	Does not believe rules are necessary
83-598	Insurance - Service of Process	Department of Insurance	No Response
83-604	Poor Children	Department of Public Aid	Rules Proposed
83-613	Engineering Grants	Board of Higher Education	Rules Proposed
83-615	Hospital Act - Identification Newborn	Department of Public Health	Agreement
83-621	Parole Decision Standards	Prisoner Review Board	Agreement
83-629	Public Utilities - Refunds	Commerce Commission	Rules Proposed
83-649	Humane Act - Investigation	Department of Agriculture	Rules Proposed
83-653	Purchase Care Rate - Developmentally Disabled	Department of Mental Health and Developmental Disabilities	No Response
83-658	Income Assignment - Spouse Child	Department of Public Aid	Rules Proposed

TABLE FOUR: PUBLIC ACTS WHICH MAY REQUIRE RULEMAKING (cont'd)

<u>Public Act</u>	<u>Subject</u>	<u>Agency</u>	<u>Response</u>
83-667	Office Responsibility	Department of Mental Health and Developmental Disabilities	No Response
83-680	Ginseng Regulations	Department of Conservation	Rules Proposed
83-689	Inter-Track Simulcast Wagering	Illinois Racing Board	Agreement
83-692	Trust Fees	Commissioner of Banks and Trusts	No Response
83-696	Occupational Therapy Licensing	Department of Registration and Education	Rules Proposed
83-697	Pharmacy Practice Act	Department of Registration and Education	Agreement
83-698	Community Support Systems Act	Department of Mental Health and Developmental Disabilities	No Response
83-705	Workers' Occupational Diseases Act - Appellate Procedure	Illinois Industrial Commission	Does not believe rules are necessary
83-727	Nursing Home - Continuing Education	Department of Registration and Education	No Response
83-730	EPA - Rulemaking Hearings	Pollution Control Board	Does not believe rules are necessary
83-735	Community Colleges - Sabbaticals	Community College Board	No Response
83-738	Beauty Culture - Qualification	Department of Registration and Education	Agreement
83-748	Medical Assistance - Hardship Payments	Department of Public Aid	No Response
83-750	Pesticides - Commercial Application	Department of Agriculture	Agreement
83-759	Meat and Poultry Inspection	Department of Agriculture	Rules Proposed
83-760	Transportation and Disposal of Dead Animals	Department of Agriculture	Agreement
83-763	High Risk Pregnancies	Department of Public Health	Does not believe rules are necessary
83-765	Dealer License Plates	Secretary of State	Agreement
83-775	Landfill Performance Bond	Pollution Control Board	Rules Proposed
83-788	Bleeder Horses	Illinois Racing Board	Agreement
83-794	School Code - Language Credit	State Board of Education	Agreement
83-801	License Insurance Procedures	Department of Insurance	Agreement
83-813	Prevailing Wages	Department of Labor	Rules Proposed
83-825	Structural Pest Control	Department of Public Health	Agreement
83-826	Respite Program	Department on Aging	Does not believe rules are necessary

TABLE FOUR: PUBLIC ACTS WHICH MAY REQUIRE RULEMAKING (cont'd)

<u>Public Act</u>	<u>Subject</u>	<u>Agency</u>	<u>Response</u>
83-843	United Way Deductions	Comptroller	Rules Proposed
83-851	Data Processing - Claims	Department of Insurance	Agreement
83-853	Architectural-Engineering Act	Board of Higher Education	Agreement
83-861	Pensions - Actuarial Statements	Department of Insurance	Agreement
83-862	Motor Fuel Standards Act	Department of Agriculture	Rules Proposed
83-863	Licensing Acts - Fees	Department of Registration and Education	Agreement
83-865	Court of Claims	Court of Claims	Does not believe rules are necessary
83-866	Disabled Children	Department of Public Aid	No Response
83-877	Family Leave Program	Central Management Services	Rules Proposed
83-878	Psychologist/Plumber/Optometrlist	Department of Registration and Education	Does not believe rules are necessary
83-904	Unmarried Parent Support	Department of Children and Family Services	Rules Proposed
83-907	World's Fair - Chicago	Chicago World's Fair Authority	No Response
83-908	Violent Crime Assistance	Attorney General	No Response
83-910	Hemophilia Act	Department of Public Health	Rules Proposed
83-919	Export Development Authority	Department of Commerce and Community Affairs	No Response
83-928	Hearing Aids	Department of Public Health	Agreement
83-945	Citizens Utility Board	Illinois Commerce Commission Citizens Utility Board	Rules Proposed
83-952	Unemployment Insurance - Shared Work	Department of Labor	No Response
83-953	Motor Fuels	Department of Agriculture	Rules Proposed
83-963	Motor Carrier Routes	Illinois Commerce Commission	No Response
83-969	Alcohol and Drug Abuse Act	Department of Mental Health and Developmental Disabilities/	No Response
83-976	State Employees - Sick Leave	Dangerous Drugs Commission	Rules Proposed
83-978	Economic Opportunity Act	Central Management Services Department of Commerce and Community Affairs	Does not believe rules are necessary
83-980	Police Organizations - Advertising	Attorney General	No Response
83-983	EPA - Environmental Response	Pollution Control Board	Agreement
83-989	Community Colleges - Policy Exceptions	State Board of Education	Does not believe rules are necessary
83-990	Radiation Waste - Interstate Compact	Midwest Interstate Low-Level Radioactive Waste Commission	No Response

TABLE FOUR: PUBLIC ACTS WHICH MAY REQUIRE RULEMAKING (cont'd)

<u>Public Act</u>	<u>Subject</u>	<u>Agency</u>	<u>Response</u>
83-991	Radioactive Waste - Management	Department of Nuclear Safety	Agreement
83-994	Vietnam Veterans Act - Rules	Department of Veterans Affairs	No Response
83-1008	Public Insurance Adjustors	Department of Insurance	Does not believe rules are necessary
83-1012	Public Labor Relations Act	State Labor Relations Board/Local Labor Relations Board	No Response
83-1014	Educational Labor Relations Act	Educational Labor Relations Board	No Response
83-1016	Veterinary Medicine Act	Department of Registration and Education	No Response
83-1017	Land Surveyors	Department of Registration and Education	No Response
83-1020	Assessors - Compensation	Department of Revenue	No Response
83-1024	Coal Development	Department of Energy and Natural Resources	Agreement
83-1027	Transportation of Liquefied Gas	State Fire Marshal/Department of Transportation	Does not believe rules are necessary
83-1037	Children - Financial Support	Department of Children and Family Services	Agreement
83-1039	Estate Tax Revisions	Attorney General	No Response
83-1045	Insect Bite Treatment	Department of Public Health	No Response
83-1050	Neighborhood Corps Act	Department of Commerce and Community Affairs	No Response
83-1051	Workers' Comp - Asbestos	Illinois Industrial Commission	No Response
83-1057	Hazardous Waste Sites	Environmental Protection Agency	No Response
83-1058	Vehicle Code - Handicapped	Secretary of State	Rules Proposed
83-1059	Voter Registration	State Board of Elections	No Response
83-1065	Warehouse Licensing	Department of Agriculture	Agreement
83-1066	Child Abuse Shelters	Department of Children and Family Services	No Response
83-1069	Detectives & Private Security	Department of Registration and Education	Agreement
83-1072	Nature Preserves - Rulemaking	Nature Preserves Commission	Rules Proposed
83-1078	Liquid Hazardous Waste	Pollution Control Board	Agreement
83-1080	Motor Fuel Taxes	Department of Revenue	No Response
83-1081	Security After Accident	Secretary of State	No Response
83-1091	Ride-sharing	Secretary of State	No Response
83-1094	Procedures	Commerce Commission	No Response

BUSINESS REGULATION STUDY

With the publication of a Catalog of Business Regulations in April 1983, the first phase of the Business Regulation Study is complete. Phase II is now underway, and has three goals. These are to maintain and expand the catalog, to computerize the data base, and to study the effect of state regulatory activity on Illinois business.

The Business Regulation Study would not have been a success without the advice and direction of the Project Steering Committee. The Steering Committee includes members of Congress, members of the Illinois General Assembly, and members of the business community, all of whom share a sincere desire to help improve the relationship between government and business. Senator Prescott E. Bloom and Senator Philip J. Rock both deserve special recognition for their efforts on the Project.

Illinois continues to look for ways to ease the regulatory problems encountered by business in the State. With this goal in mind, the Joint Committee on Administrative Rules, the Illinois Commission on Intergovernmental Cooperation, and the Department of Commerce and Community Affairs have been working together on the Business Regulation Study to classify and catalog business related state rules, to gather data on the costs of such rules, and to define which state rules are generated by federal mandate. The Business Regulation Project steering committee is determined to translate its efforts into tools to assist in the development of new legislation, to improve the regulatory process, and to provide Illinois business people with information in the form of workshops, to provide clearinghouse type aids, and to help business deal with regulatory questions.

In the spring of 1983, the results of Phase I of this cooperative effort were published as a 563 page Catalog of Business Regulations. The catalog, which is the first to be published in the United States on this topic, identifies thirty-three different agencies with more than five hundred sets of rules of Illinois agencies which impact business. The basic purpose of this

unique document is to assist in the identification of state rules that have an effect on Illinois business. Information on state regulation of business may come from many different sources. This leaves business people and their organizations with the hard, at times impossible, task of identifying and integrating this information. As a result, businesses may be unaware of, or unfamiliar with, the rules with which they must comply. It is hoped that this catalog will improve the organization and quality of the information that is available. A copy of the Catalog of Business Regulations may be obtained from the Joint Committee, and costs \$5.00.

Phase II of the Business Regulation Study is currently underway. One of the goals of this phase is to improve and expand the catalog, add new rules and amendments as necessary, to improve the indexing, and to expand the federal citations in order to more clearly identify federal requirements which increase the costs of doing business in Illinois.

An internal progress report on Phase II of the Business Regulation Study was recently completed in December, 1983. This internal working document contains a summary of agency responses to a project survey, an analysis of legislation from the spring 1983 session that affects business, and a literature review of existing data on the costs and benefits of federal and state regulations. It is hoped that this report will be available for publication and distribution in early 1984.

Besides catalog improvements and an in-depth analysis of the State's current regulatory requirements and their impact on business, Phase II of the Project also seeks to develop a computer data base to be used in much the same manner as the catalog. Development of the data base will require some improvements in the data which is currently available. But, it is hoped that in time a software package will be available to Illinois businesses. It is anticipated that this package will include the complete text of rules which may affect the activities of those businesses.

COURT DECISIONS AND ATTORNEY GENERAL OPINIONS

Section 7.05 of the Illinois Administrative Procedure Act (IAPA) requires that the Committee study the impact of court rulings and administrative action on agency rules and rulemaking. In order to carry out this responsibility, the Committee reviews recent court decisions and Attorney General opinions, and monitors pending litigation which may affect administrative rulemaking. Several noteworthy legal decisions involving administrative rules were decided during the past year.

Two decisions of the Illinois Appellate Court construing the Illinois Administrative Procedure Act in accordance with positions supported by the Committee are especially noteworthy. The cases involved an attempt by the Department of Public Aid to change the method by which the Department calculates Medicaid payments to nursing homes. In the first case (Senn Park Nursing Center v. Miller, 455 N.E.2d 153, 74 Ill. Dec. 123, First District, 1983), the court held that the Department's failure to follow the Illinois Administrative Procedure Act rulemaking procedures invalidated the new method of calculating the Medicaid payments. The court stated that the definition of a "rule" found in Section 3.09 of the Illinois Administrative Procedure Act should be broadly construed in order to safeguard the public's right to comment on proposed agency policies. The proposed change in calculating the Medicaid payments, the court ruled, fell within the Section 3.09 definition of rule since it was a statement of the general agency policy. However, since that policy had not been adopted in compliance with the Illinois Administrative Procedure Act rulemaking procedures, it was invalid.

In reaching its decision, the court narrowly construed the exceptions to the Illinois Administrative Procedure Act rulemaking procedures for matters relating to contracts and agency management. The court also rejected the argument that the Department's policy change was effective, despite the Department's violation of the rulemaking procedures, because the nursing homes had "actual knowledge" of the change in policy. The court ruled that an agency may rely on the "actual knowledge" provision of Section 4(c) of the Illinois Administrative Procedure Act to validate defective rulemaking only where

the defect involved the agency's failure to file the rule with the Secretary of State, not where the defect involved the agency's failure to follow the Illinois Administrative Procedure Act notice and comment procedures.

The second case (Senn Park Nursing Center v. Miller, 455 N.E.2d 162, 74 Ill. Dec. 132, First District, 1983), grew out of the Department's attempt to implement the same Medicaid policy change through emergency rulemaking after the circuit court had invalidated the proposed change as a violation of the general rulemaking provisions of the Illinois Administrative Procedure Act. The Department argued that the circuit court's action created a "threat to the public interest, safety or welfare" which justified use of emergency rulemaking under Section 5.02 of the Illinois Administrative Procedure Act. The appellate court disagreed. Adopting the position long advocated by the Committee, the court held that agency created "emergencies" do not justify bypassing the opportunity for public comment guaranteed by usual rulemaking procedures. The Department's resort to emergency rulemaking, the court noted, was the result of "avoidable administrative failure" to properly promulgate rules complying with the requirements of the Illinois Administrative Procedure Act in the first instance. The Department was thereby precluded from relying upon its own mistakes to justify emergency rulemaking.

During 1983, the Illinois Supreme Court addressed the constitutional limits on a legislative delegation of rulemaking power to an administrative agency in People v. Carter, 454 N.E.2d 189, 73 Ill. Dec. 329, (rehearing denied September 30, 1983), a criminal prosecution for violations of the Franchise Disclosure Act (Ill. Rev. Stat. 1981, ch. 121½, par. 701 et seq.). Defendant Carter challenged Section 12 of the Act, which provides that the Attorney General may by rule or order exempt persons from compliance with the Act if he finds that enforcement of the Act would not be "in the public interest." The Defendant contended that the legislature's delegation of this power of exemption was invalid since the "public interest" standard purporting to limit the Attorney General's discretion was so broad as to invest the Attorney General with unlimited power to define when the Act applies.

The Supreme Court rejected this argument, holding that, as used in the Franchise Disclosure Act, "in the public interest" properly confines the

Attorney General's rulemaking power. Citing several of its earlier opinions, the court reaffirmed that the Constitution requires only that the legislature provide an "intelligible standard" to guide the administrative agency. Although certain standards may be so vague as to confer virtually unlimited power on an agency to define what the law is, and thus violate the constitutional principle against a complete delegation of legislative power, broad delegations of power must be construed in conjunction with the purposes of the statute. The stated purposes of the Franchise Disclosure Act are to protect the investments of prospective franchise purchasers by ensuring they are fully informed as to the franchisor's financial condition. The Attorney General's power to declare that exemptions from the Act are in the public interest is thus confined by the requirement that such exemptions further these purposes. Accordingly, the Supreme Court held, "[w]hen considered in light of the purposes of the Act the standard 'in the public interest' is an intelligible standard which survives constitutional scrutiny."

Additionally, the Supreme Court invalidated a rule of the Department of Corrections during 1983, on the ground that the rule conflicted with its statutory authority in Lane v. Sklodowski, 454 N.E.2d 322, 73 Ill. Dec. 462 (1983). Section 3-6-3(a) of the Unified Code of Corrections (Ill. Rev. Stat. 1981, ch. 38, par. 1003-6-3(a)) authorizes the Department to adopt rules providing for good conduct credit for prisoners. That section provides in part, "Such rules and regulations shall also provide that the Director may award up to 90 days additional good conduct credit for meritorious service in specific instances as the Director deems proper." The Department interpreted this provision as allowing the Director to award up to 90 days credit in each instance, without limit as to the total number of days that could be awarded, and the Department's rules embodied this interpretation. Several State's Attorneys challenged the rules, arguing that the statute placed a limit of 90 days on the number of good conduct days that could be awarded. The Supreme Court agreed with the challengers that the intent of the statute was to restrict to 90 days the total number of good conduct days that the Director was authorized to award. The court based its opinion on the history of the statute, which indicated the legislature's paramount concern to minimize sentencing discretion. Since the Department's rules violated this legislative intent, the rules were void.

In Popejoy v. Zagel, 449 N.E.2d 1373, 70 Ill. Dec. 769 (Fourth District, 1983), the Appellate Court reaffirmed the principle that rules which conflict with their statutory authority are void. At issue was a rule of the Department of Law Enforcement Merit Board adopted pursuant to the Board's general rulemaking authority granted in Section 8 of "An Act in relation to the State Police" (Ill. Rev. Stat. 1981, ch. 121, par. 307.8). The rule established a one year probationary period for all promotions awarded to State police officers. The plaintiff, who had been promoted and then returned to his former rank during the probationary period, challenged the rule on the ground that the rule conflicted with Section 14 of the Act, which provides that all demotions are subject to specified hearing procedures. These statutory procedures were not followed in demotions carried out in accordance with the Department's probation rule. Noting that the rule "purports to abrogate . . . statutory protections by creating a one year period of promotional probation during which the statutory procedures for demotion would not apply," the court found the conflict between the statute and the rule to be "clear and irreconcilable," and declared the rule invalid.

The constitutionality of a rule of the Illinois Racing Board which authorizes warrantless searches of persons licensed by the Board and their personal effects is presently being tested in federal district court (Serpas v. Schmidt, No.82 C 4715, N.D. Ill.). The Plaintiffs, licensed grooms who live at Arlington Park Racetrack, contend that the searches authorized by Section 1424.40(a) of the Board's rules (11 Ill. Adm. Code 1424.40(a)) violate the Fourth Amendment. Those provisions of the rule which are being challenged relate to (1) warrantless searches of the Plaintiffs' residential quarters, (2) warrantless investigative stops and personal searches inside the racetrack enclosure, and (3) the conditioning of licenses upon consent to such searches. The Court, on June 17, 1983, issued a preliminary injunction enjoining the Board from engaging in each of these contested practices.

An opinion of the Attorney General issued October 7, 1983 (No. 83-017) concluded that a rule of the Department of Public Health does not violate the First Amendment's prohibition against interference with the free exercise of religion. The rule requires that non-immunized school children whose parents or guardians object to measles immunization on religious grounds be excluded

from school attendance for a 21 day period following an outbreak of measles. The Attorney General found that such a rule is not an unconstitutional restriction on the free exercise of religion since the burden imposed on religious practices by the rule is plainly outweighed by the strong public interest in suppressing the spread of communicable diseases.

SECTION TWO

STATISTICAL SUMMARY

This section presents a statistical summary of the rulemaking actions of Illinois agencies and objections issued by the Committee during 1983. A number of the statistical tables compare 1983 data to the data collected since 1978 to help reveal possible statistical trends in the rulemaking processes of the various state agencies.

In reviewing the data contained in this section, it should be noted that the various statistics represent extremely diverse and complex information relative to the rulemaking process. During 1983, nearly 17,570 pages of information, all of which related to rulemaking in one form or another, were published in the Illinois Register. Some sets of proposed rules contained hundreds of pages and were extremely complex and important to those individuals affected by them. Statistical tables alone cannot adequately convey this diversity or complexity, but should provide a general overview of rulemaking and Committee action during 1983.

TABLE FIVE presents the number of rulemakings by agency for 1983, including general, emergency and peremptory rules. A total of 585 general rulemakings were initiated during 1983. The 585 general rulemakings represent the largest number of proposals ever initiated by agencies during one year. See Section One, Review of Proposed Rulemaking, page 15, for a general discussion of this process.

Two human service agencies, the Department of Public Aid and Public Health, account for 30% of the general rulemakings initiated in 1983. There are five agencies that initiated 30 or more general rulemakings in 1983 (Departments of Conservation, Corrections, Public Aid, Public Health, and the Secretary of State). These five agencies accounted for 53% of the total rulemakings for 1983.

In 1983, twenty-five agencies initiated 49 emergency rulemakings, and five agencies initiated 16 peremptory rulemakings. See Section One, Review of Emergency and Peremptory Rulemaking, page 25, for a general discussion of this process. As can be seen in TABLE SIX, the total emergency rulemakings for 1983 is significantly down from other years. Two agencies produced the greatest number of emergency rulemakings, with 5 each. One agency promulgated 4 emergency rulemakings, five agencies promulgated 3 each, and three agencies were responsible for 2 emergency rulemakings each. Another fourteen agencies promulgated just 1 emergency rulemaking last year. In 1983, six agencies initiated a total of 16 peremptory rulemakings. The Pollution Control Board is responsible for 10 such rulemakings, while the Department of Public Aid promulgated 3 peremptory rulemakings.

TABLE SIX presents the number of emergency and peremptory rulemakings, by agency, beginning 1980 through 1983. The total number of emergency rulemakings, and the total number of issuing agencies, has decreased during this time period. The following figures compare the total emergency rulemakings with the total objections to emergency rulemakings, for a five year period.

	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>
Total emergency	102	97	60	84	49
Total objections	6 ¹	13	4	12	8
Percentage of Rules objected to		13.4%	6.6%	14.2%	16.3%

¹This figure represents the total number of objections to both emergency and peremptory rules. Separate figures for each type of rulemaking were not compiled in 1979.

A view of these figures shows no distinct statistical trend. However, it appears that the decline in the number of emergency rule filings was related to the Committee's commencement of its review of emergency rules in July 1979. It appears that the decline in emergency rule filings is also related to Committee scrutiny, but it is too early to detect a clearly discernable statistical trend in this regard. It is interesting to note that although the

number of emergency rule filings have been decreasing, the percentage of Committee objections to emergency rulemakings has increased.

TABLE SEVEN presents the number of general rulemakings by agency for each year from 1978 through 1983. There has been a general trend for increased rulemakings over the years, with a substantial increase in 1983. The discussion that follows looks at some of the agencies with the greatest general rulemaking for the present year, and explores some of the possible reasons behind the activity. It appears that this year's increased rulemaking may continue into 1984 for all agencies, as the Secretary of State's Administrative Code Unit codification deadline, which provides that all rules not codified by October 1, 1984 will be void, draws closer.

The two agencies with the highest number of rulemakings in 1983 were the Department of Public Health and the Department of Public Aid. The Department of Public Health, which shows a high level of general rulemaking for each year since 1978, is the agency with the greatest number of rulemakings for both 1982 (92) and 1983 (91). The reason for so many Public Health general rulemakings in 1983 appears to be the result of two trends: there is a budgetary trend to streamline and reduce the number of persons participating in social welfare programs, and program adjustments have generated into multiple rulemakings.

The Department of Public Aid is another agency that shows a high level of general rulemaking for each year, and is the second most active agency for 1983, with a total of 86 rulemakings. The numerous general rulemakings for the Department of Public Aid during 1983, appear to be the result of several factors. The Department filed over twenty rules in preparation for possibly drastic funding reductions during efforts to balance the State budget. Also, rulemakings may have been influenced by the budgeting provisions of the various programs they operate, as well as by the initiation of several demonstration projects.

The Department of Corrections accounts for 11% of the total for 1983, with 66 general rulemakings. This relatively high level of rulemaking activity, up from just 15 in 1982, may be partially accounted for by efforts

by the Department to replace outdated existing rules with both modified and codified rules before the Secretary of State's Administrative Code Unit's October 1, 1984 codification deadline. This high level of rulemaking is also probably spurred by the pending five-year review of the Department of Corrections' rules by the Committee.

The fourth highest level of general rulemaking activity for 1983 was generated by the Secretary of State, with 31 rulemakings, for 5% of the total. This reflects agency amendments to administrative hearing rules, the administrative rulemaking process, and the rulemaking activity in the rules concerning driving license revocation.

Rulemaking by the Department of Rehabilitation Services, which quadrupled between 1982 and 1983, results in 23 rulemakings, for 4% of the 1983 total. For the most part, this activity in 1983 has been new rulemaking, and seems to be in response to its efforts to express established policy via rulemaking.

TABLE EIGHT presents objections issued by the Committee in 1983 to agency rules. There were 156 statements of objection for the past year. This total includes 40 objections resulting from the five-year review program of existing agency rules.

A single agency, the Department of Public Aid, accounts for 19% of all objections issued in 1983. The Committee objected to 29 general rulemakings and 1 emergency rulemaking during the past year. This is the largest number of objections ever issued by the Committee to any agency's proposed rules since the proposed review program began.

TABLE NINE presents agency responses to Committee statements of objection for 1983. Out of 158 total responses to objections, 43, or 28% have been resolved through an agency agreement to modify or amend its rules.

Agencies refused to either modify or withdraw rules in 60 instances (39%) last year. The 24 refusals from the Department of Public Aid (a

refusal rate of 80% in response to the 30 objections issued by the Committee) is one of the main reasons that the total refusals number is so high in 1983.

TABLE TEN shows a comparison of total agency responses to total Committee objections, from 1978 through 1983. Agency agreement to modify or amend, which previously remained between 43% and 63%, has fallen considerably for the present year, to about 28%. Agency refusal has risen to about 39%. The relatively high number of responses that are pending include agency responses to 40 objections to existing rules issued during the five year review program.

TABLE FIVE: RULEMAKING BY AGENCY FOR 1983

<u>Code Department</u>	<u>General</u>	<u>Emergency</u>	<u>Peremptory</u>
Aging	4	0	0
Agriculture	18	0	0
Central Management Services	16	3	0
Children & Family Services	10	1	0
Commerce & Community Affairs	4	0	0
Conservation	34	4	0
Corrections	66	0	1
Energy & Natural Resources	1	0	0
Financial Institutions	3	0	0
Human Rights	3	0	0
Insurance	4	3	0
Labor	8	3	0
Law Enforcement	2	0	0
Mental Health & Developmental Disabilities	3	1	0
Mines & Minerals	6	1	0
Nuclear Safety	3	0	0
Public Aid	86	2	3
Public Health	91	2	0
Registration & Education	15	5	0
Rehabilitation Services	23	0	0
Revenue	11	0	0
Transportation	5	0	0
Veterans Affairs	1	0	0
<u>Constitutional Offices</u>			
Attorney General	2	0	0
Auditor General	1	0	0
Comptroller	4	0	0
Secretary of State	31	3	0
<u>Miscellaneous Agencies</u>			
Commerce Commission	18	5	0
Criminal Justice Information Council	4	0	0
Dangerous Drugs Commission	3	0	0
Educational Facilities Authority	1	0	0
Board of Elections	3	1	0
Emergency Services and Disaster Agency	7	0	0
Environmental Protection Agency	20	0	0
Farm Development Authority	1	1	0
Office of the State Fire Marshal	3	1	0

TABLE FIVE: RULEMAKING BY AGENCY FOR 1983 (con't)

<u>Miscellaneous Agencies</u>	<u>General</u>	<u>Emergency</u>	<u>Peremptory</u>
Guardianship and Advocacy Commission	2	0	0
Housing Development Authority	3	1	0
Human Rights Commission	2	0	0
Industrial Commission	1	0	0
State Board of Investments	2	0	0
Liquor Control Commission	1	0	0
Local Government Law Enforcement Officer's Training Board	4	1	0
Nature Preserves Commission	1	0	0
Department of Law Enforcement Merit Board	1	0	0
Pollution Control Board	23	1	10
Governor's Purchased Care Review Board	1	0	0
Racing Board	9	2	0
Office of the Savings and Loan Commissioner	1	0	0
State Employees Retirement System	1	0	1
<u>Education</u>			
State Board of Education	7	3	1
Board of Trustees of the State Community College of East St. Louis	1	0	0
Community College Board	2	1	0
Independent Higher Education Loan Authority	2	1	0
State Scholarship Commission	2	1	0
University Civil Service Merit Board	1	0	0
University of Illinois Board of Trustees of the State Universities Retirement System	1	1	0
1	0	0	
<u>Legislative Agencies</u>			
Legislative Information System	1	1	0
TOTAL	585	49	16

TABLE SIX
COMPARISON OF EMERGENCY AND PEREMPTORY RULEMAKING
BY AGENCY FOR 1980 THROUGH 1983

Agency	Emergency				Peremptory			
	1980	1981	1982	1983	1980	1981	1982	1983
Code Departments								
Aging	1	1	1		1			
Agriculture	2	1						
Central Management Services			2	3				
Children & Family Services	2		4	1		1		
Conservation	13	13	3	4				
Corrections	4	2	15			1	3	1
Financial Institutions	2	2						
Human Rights	1							
Insurance	4	2	2	3				
Labor	1	3		3		1		
Mental Health & Developmental	0	1	2	1				
Disabilities								
Mines & Minerals	1	1	3	1				
Nuclear Safety			1					
Personnel	4	5	3					
Public Aid	4	2	4	2	5	22	6	3
Public Health	11	1	15	2			1	
Registration and Education	2	2	5	5				
Rehabilitation Services			1					
Revenue	9	2	3					
Transportation	2							

TABLE SIX
COMPARISON OF EMERGENCY AND PEREMPTORY RULEMAKING
BY AGENCY FOR 1980 THROUGH 1983 (con't)

	<u>Emergency</u>			<u>Peremptory</u>				
	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>
<u>Constitutional Offices</u>								
Comptroller	1					1		
Secretary of State		2	1	3				
<u>Miscellaneous Agencies</u>								
Commissioner of Bank and Trust Companies	3		1					
Capital Development Board	2							
Commerce Commission	5		2	5			1	
Dangerous Drugs Commission	1							
State Board of Elections	4	4	2	1				
Emergency Services and Disaster Agency			1					
Environmental Protection Agency	3	2						
Farm Development Authority			1	1				
Office of the State Fire Marshal	1		2	1				
Housing Development Authority								
Industrial Commission	1	1	2	1				
Local Governmental Law Enforcement Officer's Training Board								
State Mandates Board of Appeals			1	1				
Nature Preserves Commission							1	
Law Enforcement Merit Board	1							
Pollution Control Board	1	3	1	1	4	3	7	10

TABLE SIX
COMPARISON OF EMERGENCY AND PEREMPTORY RULEMAKING
BY AGENCY FOR 1980 THROUGH 1983 (con't)

	<u>Emergency</u>				<u>Peremptory</u>			
	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>
Governor's Purchased Care Review Board	1							
Illinois Racing Board	2	2	2	2				
Office of the Savings and Loan Commissioner	1	1						
State Employees' Retirement System	3	1	1					1
Statewide Health Coordinating Council		1						
<u>Education</u>								
State Board of Education	3	1		3	7			1
Illinois Board of Higher Education		1						
Board of Regents		1						
Illinois Community College Board				1				
Illinois Independent Higher Education Loan Authority				1				
Illinois State Scholarship Commission		1	2	1				
University of Illinois		1		1				
<u>Legislative Agencies</u>								
Legislative Information System	1		1	1				
	97	60	84	49	17	27	21	16

TABLE SEVEN
COMPARISON OF GENERAL RULEMAKING BY AGENCY
FOR 1978 THROUGH 1983

Agency	General Rulemakings					
	1978	1979	1980	1981	1982	1983
Administrative Services	1		7	7	1	
Aging	5	1	6	6	4	4
Agriculture	14	17	14	16	24	18
Central Management Services					3	16
Children & Family Services	2	2	60	1	26	10
Commerce & Community Affairs				1	8	4
Conservation	76	92	75	108	33	34
Corrections	82	23	38	24	15	66
Energy & Natural Resources					2	1
Financial Institutions	1	10	8	3		3
Human Rights				5	4	3
Insurance	15	14	17	13	13	4
Labor	5	6	4	7	8	8
Law Enforcement	2		1		1	2
Local Government Affairs	1		3			
Mental Health and Development						
Disabilities	8	13	4	8	3	3
Mines and Minerals	4		5	5	6	6
Nuclear Safety			1	2	3	3
Personnel	10	9	9	9	9	
Public Aid	46	56	47	66	40	86
Public Health	42	43	55	44	92	91
Registration & Education	11	11	22	15	16	15
Rehabilitation Services			3	1	6	23
Revenue	11	16	24	45	14	11
Transportation	13	13	13	17	5	5
Veterans' Affairs	1	2	2	2		1

TABLE SEVEN (con't)

Agency	General Rulemakings					
	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>
<u>Constitutional Offices</u>						
Attorney General	3	1	2		3	2
Auditor General	7	5	2	1	4	1
Comptroller	1	2	4	3	4	4
Secretary of State	15	21	12	26	14	31
Treasurer	1	1				
<u>Miscellaneous Agencies</u>						
Abandoned Mined Lands Reclamation Council				1		
Commissioner of Banks & Trust Companies	2	5	3		6	
Capital Development Board	2	1	3		3	
Civil Service Commission				2		
Commerce Commission				10	21	18
Criminal Justice Information Council	1	2				4
Dangerous Drugs Advisory Council				2		
Dangerous Drugs Commission				2	3	3
Education Facilities Authority			1		2	1
State Board of Elections	6	1	8	3	7	3
Emergency Services and Disaster Agency				2	9	7
Environmental Protection Agency	7	12	10	16	18	20
Fair Employment Practices Commission	2	3				
Farm Developmental Authority					1	1
Office of the State Fire Marshal	1	2	1	1	7	3
Guardianship & Advocacy Commission			2	1	2	2
Health Facilities Authority	5	2		1		
Health Facilities Planning Board		1				
Health Finance Authority		1	5	1	1	
Housing Development Authority			1			3

TABLE SEVEN (con't)

Agency	General Rulemakings					
	1978	1979	1980	1981	1982	1983
Human Rights Commission				1	1	2
Industrial Commission				2	3	1
State Board of Investment	4	1	3			
Law Enforcement Commission		3	1		1	2
Liquor Control Commission				2		
Local Governmental Law Enforcement Officer's Training Board						1
Local Government Records Commission		1				4
Lottery Control Board		2				
State Mandates Board of Appeals					1	
Medical Center Commission		1				
Institute of Natural Resources		1	1	2		
Nature Preserves Commission						1
Law Enforcement Merit Board	2	2	1		1	1
Pollution Control Board	18	11	18	13	18	23
Prisoner Review Board					1	
Governor's Purchased Care Review Board	1	6	2	1		1
Racing Board	10	14	19	10	22	9
Office of the Savings and Loan Commissioner	3	4	1	7	1	1
State Employees' Retirement System	2	3	5	3	4	1
State Fair Agency		4				
Statewide Health Coordinating Council	4	1		2		
Education						
State Board of Education	3	4	9	8	3	7
Board of Higher Education		3	2	5		
Board of Regents				2		
Board of Trustees of the State Community Colleges of East St. Louis					2	1

TABLE SEVEN (con't)

Agency	General Rulemakings					
	1978	1979	1980	1981	1982	1983
Community College Board	17	11	19		1	2
Higher Education Travel Control Board		1	1	1	2	
Independent Higher Education Loan Authority						2
State Scholarship Commission				11	4	2
University Civil Service Merit Board				3		1
University of Illinois Board of Trustees of the State Universities Retirement System				1		1
						1
<u>Legislative Agencies</u>						
Aggregate Mining Problems Study Commission				1		
Joint Committee on Administrative Rules	3	5	1	1	1	
Cities & Village Municipal Problems Commission				1		
County Problems Commission				1		
Joint Condominium Study Commission				1		
Energy Resource Commission				1	1	1
Legislative Information System	1		2		2	
State Council on Nutrition				1		
Select Joint Committee on Regulatory Agency Reform				2		
Travel Control Board	1	1		1		
Commission to Visit & Examine State Institutions				1		
Mississippi River Parkway Commission				1		
TOTAL	472	467	556	563	510	585

TABLE EIGHT: STATEMENTS OF OBJECTION
ISSUED IN 1983 TO AGENCY RULES

Agency	Total Statements of Objection	General Rulemakings Objected to	Emergency Rulemakings Objected to	Peremptory Rulemakings Objected to	Existing Rules Objected to
<u>Code Departments</u>					
Central Management Services	1	1			
Children and Family Services	10	10			
Commerce and Community Affairs	2	2			
Conservation	1	1			
Correction	1	1			
Financial Institutions	12	1			11
Human Rights	1	1			
Insurance	14	2			11
Law Enforcement	1	1	1		
Nuclear Safety	13	13			
Public Aid	30	29		1	
Public Health	8	8			
Registration and Education	8	8			
Transportation	11	11			
<u>Constitutional Offices</u>					
Attorney General	3				3
Secretary of State	9	6			3
<u>Miscellaneous Agencies</u>					
Capital Development Board	3				3
Commissioner of Banks and Trust Companies	1				1
Commerce Commission	2	2			
State Board of Elections	3	3			
Environmental Protection Agency	1	1			

TABLE EIGHT: STATEMENTS OF OBJECTION
ISSUED IN 1983 TO AGENCY RULES (con't)

<u>Agency</u>	<u>Total Statements of Objection</u>	<u>General Rulemakings Objected to</u>	<u>Emergency Rulemakings Objected to</u>	<u>Peremptory Rulemakings Objected to</u>	<u>Existing Rules Objected to</u>
Office of the State					
Fire Marshal	3	3			
Industrial Commission	1		1		
State Board of Investments	3	3			
Pollution Control Board	2	1	1		
Office of the Savings and					
Loan Commissioner	5				5
Savings and Loan					
Advisory Board	3				3
<u>Education</u>					
State Board of					
Education	3		3		
State Scholarship					
Commission	1		1		
TOTALS	156	108	8	0	40

TABLE NINE: AGENCY RESPONSE TO JCAR OBJECTIONS 1983
(To general, emergency and peremptory rulemaking)*

<u>Agency</u>	<u>Refuse</u>	<u>Modify or Amend</u>	<u>Withdraw or Repeal</u>	<u>Pending</u>
<u>Code Departments</u>				
Central Management Services		1		
Children & Family Services	3	7		
Commerce & Community Affairs		2		
Conservation	1			
Corrections		1		
Financial Institutions	1			11
Human Rights**	1	1		
Insurance	1		2	11
Law Enforcement				1
Nuclear Safety	6	7		
Public Aid	24	3	2	1
Public Health		2	2	4
Registration & Education	8			
Transportation	2	9		
<u>Constitutional Offices</u>				
Attorney General				3
Secretary of State	6			3
<u>Miscellaneous Agencies</u>				
Capital Development Board				3
Commissioner of Banks and Trust Companies				1
Commerce Commission		2		
State Board of Elections	1	2		
Environmental Protection Agency		1		
Office of the State Fire Marshal			1	2
Industrial Commission	1			
State Board of Investments**	3	1		
Pollution Control Board	1	1		
Office of the Savings and Loan Commissioner				5
Savings and Loan Advisory Board				3

TABLE NINE: AGENCY RESPONSE TO JCAR OBJECTIONS 1983 (con't)
(To general, emergency and peremptory rulemaking)*

<u>Agency</u>	<u>Refuse</u>	<u>Modify or Amend</u>	<u>Withdraw or Repeal</u>	<u>Pending</u>
<u>Education</u>				
State Board of Education		3		
State Scholarship Commission	1			
TOTAL	60	43	7	48

* Does not include Agency response to objections to existing rules

** Refused in part, and modified in part

NOTE: The total agency response is greater than the total objections because the agency may respond in more than one way to a multiple objection.

TABLE TEN: COMPARISON OF AGENCY RESPONSES
TO OBJECTIONS FROM 1978 THROUGH 1983

	<u>1978</u>	<u>1979</u>	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>
NUMBER OF OBJECTIONS ISSUED	72	65	55	62	99	156*
AGENCY RESPONSES:						
Withdrawn or Repealed	14 (19.4%)	2 (3.0%)	5 (9.1%)	10 (16.1%)	10 (10.0%)	7 (4.5%)
Modified or Amended	34 (47.2%)	30 (46.2%)	24 (43.6%)	31 (50.0%)	62 (62.6%)	43 (27.6%)
Refusal	24 (33.3%)	33 (50.8%)	26 (47.3%)	21 (33.9%)	27 (27.2%)	60 (38.5%)
Pending	0	0	0	0	0	48 (30.8%)

*Note: Number of objections issued is less than the total agency responses as the agency may respond to one objection in more than one way.

SECTION THREE

SPECIFIC OBJECTIONS AND RECOMMENDATIONS ISSUED

An exhaustive listing of the specific statements of objection and recommendation issued by the Committee in 1983 appears in this section. The listing is organized in alphabetical order by agency with the agencies first being broken down into the categories Code Departments, Constitutional Officials, Miscellaneous State Agencies, and Educational Agencies. This format should make the objections and recommendations fairly accessible to persons interested in researching issues of interest. This report is the only document that compiles all of the objections and recommendations of the Committee according to this organization.

1983 STATEMENTS OF OBJECTION TO PROPOSED RULES

Code Departments

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

Amendment to Standard Procurement Rule 11.20

Initial Publication in Illinois Register: July 8, 1983

Date Second Notice Received: August 29, 1983

Joint Committee Objection: September 22, 1983

Specific Objection:

Section 11.20(F) of the Department of Central Management Services' Standard Procurement Rules outlines a series of provisions to be used to break tie bids when more than one bid meets the specifications and requirements of the Invitation for Bids (formal opportunity to bid) and includes the same low bid. The first provision gives preference to Illinois vendors. The second examines the "responsibility" of the vendor. Section 11.20(F)(2) provides that: "A bidder who has had experience in contracting with the State may be given additional consideration in determining responsibility." (emphasis added)

The quality of the goods and the promised delivery date are the third and fourth tie-breaking provisions. The fifth provision is outlined in Section 11.20(F)(5) which provides: "If the bids quoting the same price are equal in every respect, the award may be made by lot to one or more of the low bidders; or may be split equally among all the low bidders if this is feasible, will not lead to any limitation of competition

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TO PROPOSED RULES

among bidders, and is in the best interest of the State of Illinois."

The Department was asked to state the criteria it will use to determine when a vendor with State contracting experience will be given additional consideration in determining responsibility. The Department stated that a vendor with experience in contracting with the State will be given additional consideration in determining responsibility if some benefit to the State might result. The Department also stated that some factors involved in making this determination are the type of item, and the State's interest in promoting competition within the State and in promoting future sources of supply. Failure to insert specific standards within this section could completely invalidate the bidding process in that, without the inclusion of such standards, the rule allows the Department unfettered discretion in determining which vendor will be awarded the bid.

The Department was also asked to state the criteria used to determine when awards will be made by lot and when awards will be split among low bidders. The Department explained that dealing with one vendor is generally preferable from an administrative standpoint, but that an award may split equally among all low bidders if such a division is feasible, will not lead to the limitation of competition, and is in the best interests of the State. Such a split might be warranted for financial reasons or to foster additional future sources of supply. The Department stated that this provision is the very last step of the tie-breaking process, and is used only where tied bids are equal in every respect. While this provision may seldom be used, by leaving the vague standard in the rule, the Department in effect renders the rule meaningless, and thereby defeats the whole purpose of adopting the rule.

Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004.02) requires that each rule which implements a discretionary power to be exercised by an agency include the standards by which the agency shall exercise the power. This section also provides that such standards shall be stated as precisely and clearly as practicable under the conditions, in order to inform fully those persons affected by the rule. It appears that the inclusion of the standards stated by the Department would remedy this objection; however, the Department's failure to specifically state in these rules the standards used to make discretionary determinations when awarding contracts in cases of tie bids violates Section 4.02 of the Illinois Administrative Procedure Act in that these rules fail to specifically state such standards and because those persons affected by the rules are not apprised of the standards used by the Department. Obviously, the Department can (and has) stated more definite standards; nonetheless the Department has declined to insert such standards within these rules.

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The Joint Committee objects to Sections 11.20(F)(2) and 11.20(F)(5) because they fail to include the standards used by the Department in making discretionary determinations when awarding contracts in cases of tie bids.

Date Agency Response Received: October 6, 1983

Nature of Agency Response: Modified to Meet the Objection

Publication as Adopted in the Illinois Register: October 7, 1983

Effective Date: October 4, 1983

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Part 406, Licensing Standards for Day Care Homes; Repeal Regulation Number 5.09, Minimum Standards for Licensed Day Care Homes

Initial Publication in Illinois Register: November 12, 1982

Date Second Notice Received: March 2, 1983

Joint Committee Objection: April 19, 1983

Specific Objection:

Proposed Section 406.24(f) requires the caregiver to notify the parents of all children placed in a day care home of the presence of children who are not immunized for certain diseases because of a statutory exemption based on religious grounds.

The Joint Committee objects to this proposed rulemaking because the rule does not comply with the legislative intent of Section 7(e) of the Child Care Act of 1969, Ill. Rev. Stat. 1981, ch. 23, par. 2217, the statutory authority on which it is based, and because there does not appear to be adequate justification and rationale for the rulemaking.

Date Agency Response Received: May 26, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: July 1, 1983

Effective Date: July 1, 1983

Part 406, Licensing Standards for Day Care Homes; Repeal Regulation Number 5.09, Minimum Standards for Licensed Day Care Homes

Initial Publication in Illinois Register: November 12, 1982

1983 STATEMENTS OF OBJECTION
TO PROPOSED RULES

Date Second Notice Received: March 2, 1983

Joint Committee Objection: April 19, 1983

Specific Objection:

Proposed Section 406.9(a) allows the Department to prohibit contact between children in a day care home and individuals who have been identified through the Department's investigatory process or circuit court proceedings as having been a perpetrator of child abuse, child neglect, or child sexual abuse within the preceding 10 years.

The Joint Committee objects to this proposed rulemaking because the rule implements a discretionary power to identify an individual as having been a perpetrator of certain abuse or neglect without giving the standards for such determination, in violation of Section 4.02 of the Illinois Administrative Procedure Act.

Date Agency Response Received: May 26, 1983

Nature of Agency Response: Partial Modification/Partial Failure to Modify

Publication as Adopted in the Illinois Register: July 1, 1983

Effective Date: July 1, 1983

Part 406, Licensing Standards for Day Care Homes; Repeal Regulation Number 5.09, Minimum Standards for Licensed Day Care Homes

Initial Publication in Illinois Register: November 12, 1982

Date Second Notice Received: March 2, 1983

Joint Committee Objection: April 19, 1983

Specific Objection:

Proposed Section 406.8(d) uses the term "approved public water supply" in relation to the sources of drinking water which can be used in the day care home. The Department has indicated it does not approve water supplies.

The Joint Committee objects to this proposed rulemaking because the use of the term "approved public water supply" is not simple and clear so as to be understood by the persons and groups affected by the rule, and because the Department has no adequate standards for determining when a public water supply is approved, in violation of Section 4.02 of the Illinois Administrative Procedure Act.

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TO PROPOSED RULES

Date Agency Response Received: May 26, 1983

Nature of Agency Response: Modified to Meet the Objection

Publication as Adopted in the Illinois Register: July 1, 1983

Effective Date: July 1, 1983

Part 406, Licensing Standards for Day Care Homes; Repeal Regulation
Number 5.09, Minimum Standards for Licensed Day Care Homes

Initial Publication in Illinois Register: November 12, 1982

Date Second Notice Received: March 2, 1983

Joint Committee Objection: April 19, 1983

Specific Objection:

Proposed Section 406.18(f)(1) uses the term "relevant state statutes" to describe the requirements with which a vehicle must comply in order for it to be used by a day care home to transport day care children.

The Joint Committee objects to this proposed rulemaking because the language "relevant state statutes" is not clear enough to be understood by the persons it will affect.

Date Agency Response Received: May 26, 1983

Nature of Agency Response: Modified to Meet the Objection

Publication as Adopted in the Illinois Register: July 1, 1983

Effective Date: July 1, 1983

Part 406, Licensing Standards for Day Care Homes; Repeal Regulation
Number 5.09, Minimum Standards for Licensed Day Care Homes

Initial Publication in Illinois Register: November 12, 1982

Date Second Notice Received: March 2, 1983

Joint Committee Objection: April 19, 1983

Specific Objection:

Proposed Section 406.12(a) prohibits the day care home from accepting for care a child for more than 12 hours in any 24-hour period on a regular basis.

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The Joint Committee objects to this proposed rulemaking because the use of the term "regular basis" is not clear, so that the rule can be understood by the persons affected by it.

Date Agency Response Received: May 26, 1983

Nature of Agency Response: Modified to Meet the Objection

Publication as Adopted in the Illinois Register: July 1, 1983

Effective Date: July 1, 1983

Part 406, Licensing Standards for Day Care Homes; Repeal Regulation Number 5.09, Minimum Standards for Licensed Day Care Homes

Initial Publication in Illinois Register: November 12, 1982

Date Second Notice Received: March 2, 1983

Joint Committee Objection: April 19, 1983

Specific Objection:

Proposed Section 406.11(a) allows a substitute caregiver to be utilized in the day care home periodically.

The Joint Committee objects to this proposed rulemaking because the use of the word "periodically" is not clear, so that the rule can be understood by the persons it will affect.

Date Agency Response Received: May 26, 1983

Nature of Agency Response: Modified to Meet the Objection

Publication as Adopted in the Illinois Register: July 1, 1983

Effective Date: July 1, 1983

Part 407, Licensing Standards for Day Care Centers; Repeal: Regulation Number 5.13, Minimum Standards for Licensed Day Care Centers and Night Time Centers

Initial Publication in Illinois Register: July 23, 1982

Date Second Notice Received: May 27, 1983

Joint Committee Objection: July 12, 1983

Specific Objection:

Section 407.29(a) of the standards used by the Department of Children and Family Services for the licensing of day care

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centers deals with the medical report requirements for children enrolled in the day care center. Section 407.29(a)(5) states:

When required immunizations, physical examinations, and/or medical treatment have been waived on medical or religious grounds, the parent(s) or guardian of other children cared for in the group to which the child is assigned shall be notified.

Such waivers are required by statute. Section 7(e) of the Child Care Act of 1969, Ill. Rev. Stat. 1981, ch. 23, par. 2217(e), states:

Any standards involving physical examinations, immunization, or medical treatment shall include appropriate exemptions for children whose parents object thereto on the grounds that they conflict with the tenets and practices of a recognized church or religious organization, of which the parent is an adherent or member.

Section 7(e) was added by P.A. 82-441 and P.A. 82-455 and had an effective date of January 1, 1982. The plain intent of this statutory provision is that the wishes of parents concerning medical treatment must be honored, if such concerns are based on religious grounds.

The proposed rulemaking is an apparent response to this statutory mandate. The Department requires a written statement signed by the child's parent or guardian to be on file at the home regarding the waivers. The second requirement, however, that the parents of other children in the group be notified of the presence of children exempted on religious grounds, appears to go beyond the intent of the statute which requires the exemption.

The language of the statutory provision would indicate an intention to respect religious beliefs. The effect of the rule could be to stigmatize children because of the sincerely held religious beliefs of the parents or because they have some physical problem. It takes little imagination to conclude that some children, upon learning that others in their company are "different," will respond in an unsuitable manner. It also takes little imagination to conceive of parents of immunized children removing the children from a center because of the presence of nonimmunized children. It is a short step to day care centers refusing to admit nonimmunized children because of the concern that notified parents of immunized children will fear to place their children in a center once they are notified of the presence of the nonimmunized children - no matter how rational that fear may be. The parent could assume that the center would not be notifying them if there were not a problem

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or risk. In addition, notification itself would increase the administrative burden on a center.

It should also be noted that the notification requirement of the Department appears to be unique. The Department of Public Health has promulgated rules on immunizations in "Rules and Regulations of the Illinois Department of Public Health" has listed the diseases for which children must be inoculated. Children must be immunized before they can be admitted to school. The Department of Public Health has a similar exemption for children not immunized for religious or medical grounds. The Department of Public Health, however, does not have any notification requirements. The rules simply require that an accurate list be maintained at every attendance center of all children who have not been immunized against certain listed diseases.

While not directly stated, the implicit purpose of the policy regarding the notification requirements is to protect the health of children in day care centers. However, it would seem that the only children at risk would be those who have not been immunized, and then only when there is some presence of the disease in the community. The Department cited no facts or studies regarding the risks involved when nonimmunized and immunized children are mixed, nor did it claim that immunizations were not effective in protecting exposed children.

It would appear that the protection of the children would be insured if the Department had a limited notification policy whereby the parents of the nonimmunized children in a day care center were notified of the presence of other nonimmunized children. This would limit the administrative burden on the center, and also limit the effects of such modification on both the children and the day care center.

Two of the criteria for the Joint Committee's review of proposed rulemaking are whether each part complies with the statutory authority and legislative intent on which it is based, 1 Ill. Adm. Code 220.900(a)(2), and whether there is an adequate justification and rationale for the rulemaking and for any regulation of the public, 1 Ill. Adm. Code 220.900(b)(1). Therefore, the Joint Committee objects to Section 407.29(a)(b)(5) of "Licensing Standards for Day Care Centers" of the Department of Children and Family Services, because the notification requirements regarding exempted children is contrary to the legislative intent of Section 7(e) of the Child Care Act of 1969, and because it is not adequately justified in view of available alternatives.

Date Agency Response Received: July 22, 1983

Nature of Agency Response: Modified to Meet the Objection

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Publication as Adopted in the Illinois Register: August 5, 1983

Effective Date: August 15, 1983

Part 407, Licensing Standards for Day Care Centers; Repeal: Regulation Number 5.13, Minimum Standards for Licensed Day Care Centers and Night Time Centers

Initial Publication in Illinois Register: July 23, 1982

Date Second Notice Received: May 27, 1983

Joint Committee Objection: July 12, 1983

Specific Objection:

Section 407.10 of the standards used by the Department of Children and Family Services in the licensing of day care centers concerns the general requirements for the center personnel.

Section 407.10(c)(1) states:

No individual shall be in contact with children in a day care center who:

1) has been identified through circuit court proceedings or the Department's investigatory process in accordance with the Abused and Neglected Child Report Act (Ill. Rev. Stat. 1981, ch. 23, pars. 2051 et seq.) as having been a perpetrator of child abuse, child neglect, or child sexual abuse within the preceeding [sic] 10 years:

The Department has agreed to include language to describe the level of identification necessary under its investigatory process in accordance with the Abused and Neglected Child Reporting Act. The Department, however, has refused to include language to clarify the level of identification through circuit proceedings which will serve to prevent an individual from being in contact with children cared for in a day care center.

The Department maintains the position that the language as proposed gives it the necessary flexibility to prevent certain individuals from coming into contact with children at the center. The Department did not want to limit itself to convictions under criminal law, because a continuance under supervision in a case would result in no conviction, even though the person would have committed the offense charged. Likewise, under the Juvenile Court Act, the Department contends that to propose too much specificity in a rule, such as limiting its standards to specific findings of abuse or

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neglect, would provide too many loopholes in its desired policy of preventing contact between these individuals and the day care children. The Department contends that detailed specificity would require it to change its rule every time there was any type of change in the criminal, juvenile, or other applicable statutes. The Department feels that the concept of identification through circuit court proceedings as the perpetrator of abuse is specific enough, since the Court system in Illinois is unified under the circuit court system.

The problem with the position of the Department is that it fails to include any real standards for what identification can involve. Being "identified" through circuit court proceedings could conceivably mean that an individual has been accused of a crime, without reference to any finding of guilt or innocence. A hearing under the Juvenile Court Act could result in continuing the matter under the supervision of the Court, without any finding of neglect or abuse. The current language of the proposed rulemaking gives no indication of what level of "identification" is sufficient.

Section 4.02 of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1981, ch. 127, par. 1004.02, requires that each rule implementing a discretionary power by an agency must include the standards by which the agency exercises the power. In Section 407.10(c)(1), the Department assumes the power to prohibit contact between children and any individual who has been identified through circuit court proceedings as a perpetrator of child abuse or neglect. No standards are given for the type of identification necessary. Because the rule lacks standards for the implementation of a discretionary power, the Joint Committee objects to Section 407.10(c)(1) of "Licensing Standards for Day Care Centers" of the Department of Children and Family Services.

Date Agency Response Received: July 22, 1983

Nature of Agency Response: Modified to Meet the Objection

Publication as Adopted in the Illinois Register: August 5, 1983

Effective Date: August 15, 1983

Audits, Reviews and Investigations (89 Ill. Adm. Code 434)

Initial Publication in Illinois Register: July 1, 1983

Date Second Notice Received: October 16, 1983

Joint Committee Objection: November 17, 1983

Specific Objection:

1983 STATEMENTS OF OBJECTION
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The Joint Committee objects to the Department of Children and Family Services' proposed amendments to 89 Ill. Adm. Code Part 434 because the Department's failure to provide an initial and final regulatory flexibility analyses violated Section 5.01 of the Illinois Administrative Procedure Act.

Section 5.01(a)(4) of the Illinois Administrative Procedure Act requires a notice of proposed rulemaking to include an initial regulatory flexibility analysis containing descriptions of the types of small businesses subject to the rule; of the proposed reporting, bookkeeping and other procedures required for compliance with the rule; and of the types of professional skills necessary for compliance. Section 5.01(b)(2) requires the second notice to include a final regulatory flexibility analysis containing a summary of issues raised and a description of actions taken on alternatives suggested by small businesses.

In its first notice, the Department stated that the initial regulatory flexibility analysis was not applicable because it thought no small business were subject to the rule. Likewise, the requirement for a final regulatory flexibility analysis was deemed "not applicable."

Upon questioning by the Joint Committee staff, however, the Department indicated that small businesses were affected by the rule, and submitted both an initial and final regulatory flexibility analyses.

The initial analysis indicates that five types of businesses would be affected by these rules - child care institutions and maternity centers, group homes, child welfare agencies, daycare centers and agencies, and individual purchase of service contractors. It further states that, since the amendments "merely structure and clarify" existing rules there are no additional reporting bookkeeping or other fiscal requirements imposed. The same accounting, bookkeeping and recordkeeping skills would be necessary. Failure to include this analysis as part of the first notice was a clear violation of Section 5.01 of the Illinois Administrative Procedure Act. That violation cannot be remedied by submission of the analysis to the Joint Committee after second notice since the analysis is to be included in the first notice to alert small businesses as to their opportunity to suggest alternatives to the Department's proposals.

The final regulatory flexibility analysis merely states, "The sole provider who commented during the first notice period did not express any concerns regarding the fiscal accountability requirements that are imposed by these rules on providers." This statement is clearly inadequate in that it does not say what issues were raised by small businesses.

Date Agency Response Received: December 12, 1983

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Nature of Agency Response: Refusal to Modify or Withdraw
Publication as Adopted in the Illinois Register: Pending
Effective Date: Pending

Audits, Reviews and Investigations (89 Ill. Adm. Code 434)

Initial Publication in Illinois Register: July 1, 1983
Date Second Notice Received: October 16, 1983
Joint Committee Objection: November 17, 1983
Specific Objection:

The Joint Committee objects to the proposed amendments to Part 434 because the Department of Children and Family Services has policies on follow-up reviews which are rules as defined in Section 3.09 of the Illinois Administrative Procedure Act and which should have been published in the notice of proposed rulemaking as required by Section 5.01 of the Illinois Administrative Procedure Act.

This proposed rulemaking makes substantial revisions in the Department of Children and Family Services' rules entitled "Audits, Reviews, and Investigations," (89 Ill. Adm. Code Part 434). These rules set forth procedures applicable to audits, reviews, and investigations of purchase of service providers and others who contract with or are licensed by the Department. Among the changes made was the addition of a definition of "Follow-up Review" in Section 434.2; this change appeared in both the first and second notices. "Follow-up Review" is clarified as "a viewing of past occurrences, contemplation or consideration of past events, circumstances, or facts." However, the term "follow-up" review was not used elsewhere in the rulemaking.

When questioned as to the necessity for this definition, the Department explained the procedure and provided a new paragraph 434.4(e) as follows:

Follow-up reviews will be conducted when providers of service have major internal control weaknesses which have been identified in the final audit report. Major internal control weaknesses include but are not limited to the following:

- (1) controls over cash accounts or petty cash;
- (2) control over fixed assets;

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- (3) noncompliance with recordkeeping contractual requirements;
- (4) major deviations from generally accepted accounting principles in provider's financial reporting and recordkeeping practices.

Upon further questioning the Department explained that the follow-up review consists of an audit performed six months after completion of the audit which identified the weaknesses. The follow-up would be in addition to the next regular annual audit.

It is clear that these policies are rules as defined in Section 3.09 of the Illinois Administrative Procedure Act. Furthermore, these policies are significant and should have been published in the notice of proposed rulemaking on Part 434 as required by Sections 5 and 5.01 of the IAPA. Therefore, the Joint Committee objects to the proposed amendments to Part 434.

Date Agency Response Received: December 12, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

Community Development Block Grant Program for Small Cities (47 Ill.
Adm. Code 110)

Initial Publication in Illinois Register: April 1, 1983

Date Second Notice Received: May 20, 1983

Joint Committee Objection: June 7, 1983

Specific Objection:

In October of 1981 the Governor designated the Department of Commerce and Community Affairs as the State's administrative agency for the Federal Community Development Block Grant - Small Cities Program. Under this program, known on the State level as the Community Development Assistance Program, Federal Funds are available for community development in municipalities of 50,000 or less in population.

Proposed Section 110.80 states:

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A portion up-to-five-percent-(5%) of total program funds will be reserved for the Special Set-Aside Fund. The specific amount of the special set-aside will be announced annually in the Department's Application Guide.

Proposed Section 110.90 continues:

In order to better respond to severe economic problems, unique job creation opportunities for low and moderate-income people, and natural disasters, the Department will set-aside a portion 5% of the total allocation of block grant funds. This set-aside of funds will be made available on an "as needed" basis.

Staff asked the Department to describe the standards it will use to determine the amount or percentage of funds to be reserved for the set-aside.

The Department stated that the "portion" will be determined by the needs established through formal public hearings and advisory councils. Based upon the information gathered at these meetings the Department will decide what "portion" of funds should be reserved for the special set-aside program. The Department advised that its standard of providing set-aside funds on an "as needed" basis is sufficient. The Department further commented it would have to initiate new rulemaking each year in order to provide a new percentage figure because the "portion" changes from year to year. For example, while for fiscal year 1982 the Department reserved 5% for the set-aside, the set-aside for fiscal year 1983 represents 17% of the total allocation or \$5 million.

The Department further stated that it did not include the "specific amount" in the rule because the policy determining this is described in the Department's Application Guide. Since this amount varies from year to year based upon economic conditions, the Department would have to initiate new rulemaking each year to adjust the factors in determining this amount. The Department explained that the procedure for determining the specific amount is only a "descriptive process" and should not be considered a rule.

Sections 110.80 and 110.90 provide discretionary authority to the agency and fail to provide standards under which "a portion" and a "specific amount" shall be determined. Section 4.02 of the Illinois Administrative Procedure Act requires that each rule which exercises a discretionary power by an agency shall provide standards in the rule by which the agency will exercise this power. Therefore, the Joint Committee objects to Sections 110.80 and 110.90.

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Date Agency Response Received: June 23, 1983

Nature of Agency Response: Modified to Meet the Objection

Publication as Adopted in the Illinois Register: July 1, 1983

Effective Date: June 21, 1983

Community Development Block Grant Program for Small Cities (47 Ill. Adm. Code 110)

Initial Publication in Illinois Register: April 1, 1983

Date Second Notice Received: May 20, 1983

Joint Committee Objection: June 7, 1983

Specific Objection:

Section 110.100 describes the "Activity Ranking System" used by the Department to award grants under the Community Development Assistance Program to competing applicants. The existing rule describes a process whereby points are awarded for "Community Needs" and "Technical Evaluation." Community Needs points are scored to target assistance to the most distressed areas, while Technical Needs points are awarded on the basis of the effectiveness and design of project proposals.

The existing Section 110.100 outlines the Department's ranking and scoring system by assigning a maximum number of points to each of several specified criteria for both Community Needs and Technical Evaluation. The maximums vary so as to weight the impact of certain criteria. The proposed amendments replace this information with the following paragraph (a)(2):

Indicators of community need includes [sic] such factors as county unemployment rate, number of persons in poverty, percentage of persons in poverty, and the overall economic well-being of the Community. Criteria to be utilized in the technical evaluation include factors such as impact on the community, benefit to low moderate income people, and the extent to which the project successfully achieves the objective of resource leveraging. The specific criteria and their relative weight for both the community needs and technical evaluation categories will be published annually in the Department's Application Guide. [emphasis added]

Because these criteria are rules and because Section 4.02 requires discretionary rules to contain criteria to guide the

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exercise of that discretion, the Department was asked to explain why it was making these changes.

The Department felt these standards and criteria should be deleted from the rule because the Department requires flexibility in the weighting of the standards and criteria based on economic conditions. For example, if unemployment were to suddenly drop from 12% to 5%, it would need to adjust the weighting of this standard for the next year. The Department further explained that it would have to initiate new rulemaking each time it changed the weighting of the standards and criteria if they were left in the rule.

However, these standards and criteria are "rules" as defined in Section 3.09 of the Illinois Administrative Procedure Act, and the initiation of new rulemaking each time they are changed is exactly what is required by Section 5(a) of the IAPA.

The amendments to Section 110.100(a) embody the discretionary power of the Department to determine the specific criteria and their relative weights used in allocating millions of dollars among competing municipalities. Section 4.02 of the IAPA requires such a rule to include standards by which to guide the exercise of that discretion and to state such standards precisely and clearly. The amendments do not include, and in fact delete, such standards. Therefore, the Joint Committee objects to proposed Section 110.100(a).

Date Agency Response Received: June 23, 1983

Nature of Agency Response: Modified to Meet the Objection

Publication as Adopted in the Illinois Register: July 1, 1983

Effective Date: June 21, 1983

DEPARTMENT OF CONSERVATION

Proposed Tax Incentives to Rehabilitate Owner-Occupied Historic Residences (17 Ill. Adm. Code 360)

Initial Publication in Illinois Register: April 22, 1983

Date Second Notice Received: July 13, 1983

Joint Committee Objection: September 22, 1983

Specific Objection:

Proposed Section 360.20(b)(2) states:

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"Substantial rehabilitation" means a rehabilitation project that provides a visible community benefit that enhances or improves the quality of the historic building and involves at a minimum, the exterior of the historic building.

Section 20j-1(m) of the Revenue Act of 1939 states:

"Substantial rehabilitation" means a rehabilitation project that preserves the historic building in a manner that significantly improves its condition.

The Department was asked to provide the statutory authority for requiring that substantial rehabilitation must involve "at a minimum, the exterior of the historic building" and must provide "a visible community benefit."

The Department indicated that since the statutory definition of "substantial rehabilitation" is "vague," the Department is attempting to clarify and give meaning to the statutory definition. The statute, however, is not vague. It clearly requires a project to preserve the building in a manner that significantly improves the building's condition. One could easily imagine extensive interior or foundation work that would be consistent with the statutory purpose of preservation and would also be a significant improvement in a building's condition. Such work would meet the statutory requirements but would not meet the Department's requirement of exterior renovation. Thus, Section 360.20(b)(2) significantly limits the statutory definition.

The Department pointed out that Section 20j-4(b)(2) of the Act mandates that the cost of the rehabilitation must be "equal to or greater than 25% of the base year valuation." In order to reach that cost, according to the Department, some exterior work is usually involved. If that is the case, it would appear as though the requirement regarding the exterior may not even be necessary.

Section 20j-1(m) of the Act requires only that the rehabilitation of a building "significantly improves its condition"; the statute does not require that the rehabilitation involve the exterior of the building nor that it be "a visible community benefit." The requirements in the definition at Section 360.20(b)(2) exceed the statutory requirement at Section 20j-1(m) of the Act. The Joint Committee objects to Section 360.20(b)(2) of this rulemaking because the Department has exceeded its statutory authority.

Date Agency Response Received: November 10, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

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Publication as Adopted in the Illinois Register: November 18, 1983

Effective Date: November 8, 1983

DEPARTMENT OF CORRECTIONS

Academic Education Programs, A.D. #501; School District #428, A.D. #500
J.D. #401

Initial Publication in Illinois Register: March 4, 1983

Date Second Notice Received: May 11, 1983

Joint Committee Objection: June 7, 1983

Specific Objection:

Section 4.01 of the Illinois Administrative Procedure Act requires that each agency maintain as rules the following:

1. a current description of the agency's organization with necessary charts depicting same;
2. the current procedures on how the public can obtain information or make submissions or requests on subjects, programs, and activities of the agency;
3. tables of contents, indices, reference tables, and other materials to aid users in finding and using the agency's collection of rules currently in force; and
4. a current description of the agency's rulemaking procedures with necessary flow charts depicting same.

Despite the requirements of Section 4.01 of the Administrative Procedure Act, the Department has steadfastly refused to adopt rules depicting the organization of School District #428. As a result of its five-year review of these rules, the Joint Committee published, in the October 1, 1983 Illinois Register, a Recommendation that the Department adopt such rules. The Department refused to follow the Joint Committee's Recommendation because it believes that to do so might confuse the public into thinking that School District #428 is a separate entity from the Department when, in practice, it is not. To help avoid such confusion and allay the Department's concern, the Joint Committee developed Senate Bill 419 and House Bill 1084, which amend the School Code to clearly state that School District #428 "shall be included in the administrative structure

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of the Department." Senate Bill 419 was introduced by Senator Berman, with Representatives White and V.F. Frederick as House Sponsor. House Bill 1084 was introduced by Representative Nelson, with Senator Berman as the Senate Sponsor. Still, the Department continues to refuse to adopt any rules depicting the organization of School District #428.

The Department's position is difficult to comprehend, in view of the clear language of the Illinois Administrative Procedure Act, which is mandatory, not discretionary. In view of the Department's stated concern about the status of the School District as part of the Department, it would appear that inclusion of the school district in the Department's organization chart would clarify, rather than confuse, the issue.

Therefore, the Joint Committee objects to this proposed rulemaking because it fails to include rules depicting the organization of School District #428 as required by Section 4.01 of the Illinois Administrative Procedure Act.

Date Agency Response Received: September 6, 1983

Nature of Agency Response: Modified to Meet the Objection

Publication as Adopted in the Illinois Register: September 23, 1983

Effective Date: September 16, 1983

DEPARTMENT OF FINANCIAL INSTITUTIONS

Uniform Disposition of Unclaimed Property Act Rules

Initial Publication in Illinois Register: January 28, 1983

Date Second Notice Received: August 12, 1983

Joint Committee Objection: September 22, 1983

Specific Objection:

1. Section 7a of the Uniform Disposition of Unclaimed Property Act provides that "the provisions of this Act shall not apply to an active express trust." Rule 1.5 of the Department's rules defines certain trust relationships that the Department has determined do not constitute active express trusts. Rule 5 (Rule 6 as originally proposed), provides that certain types of nominee and street name property in the custody of a holder is not deemed to be an active express trust.

It appears that in promulgating Rules 1.5 and 5, the Department has exceeded its statutory authority in that the Department is attempting to narrow the definition of what

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constitutes an active express trust to a greater degree than the concept has been defined by Illinois Courts. (See Price v. State of Illinois 79 Ill. App.3d 143, 398 N.E.2d 365, 1979)

As pointed out by the Court in the Price case, "an express trust is a trust which is created in express terms in a written instrument or which arises from the direct and positive action of the parties as evidenced by written instruments, words expressed or both." (citations omitted) An active trust is "one in which the trustee is charged with active duties to carry out the purpose of the trust." An examination of Rules 1.5 and 5 discloses that the rules are more narrow than the above definitions of what would constitute an active express trust.

2. Section 11(a) of the Uniform Disposition of Unclaimed Property Act (Ill. Rev. Stat. 1981, ch. 141, par. 101 et seq.) provides, in part, that "Every person holding funds or other property tangible or intangible presumed abandoned under this Act shall report to the Director with respect to the property as hereinafter provided."

In response to this statutory reporting requirement, the Department has promulgated Rule 2. This rule deals with "negative reports." The rule states, in relevant part, that, "Holders having no property to report shall so report to the Director" This requirement of reporting even when no funds or property is held is different than the requirement of Section 11(a) which requires reports of those holding funds or property.

The Department was asked to provide a specific citation to its statutory authority for Rule 2. The Department explained that it relies on Sections 23 and 26 of the Act as the statutory authority for this rule. The Department indicated that it relies, specifically, upon the first paragraph of Section 23 which states:

If the Director has reason to believe that any person has failed to report property in accordance with this Act, he may make a demand by certified mail return receipt requested, that such report be made and filed with the Director.

Furthermore, Section 26 of the Act is a general grant of rulemaking authority to "carry out the provisions of this Act."

Despite the Department's assertions, it does not appear that Sections 23 and 26 are adequate statutory authority for the "negative reports" requirement, especially in light of the specific language of Section 11(a) of the Act. Section 23 of the Act allows the Director to demand a report, but only if, he has reason to believe that someone has failed to report

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property. This language would appear to require the Director to make an individualized finding of noncompliance with Section 11(a) of the Act before demanding a report. The "negative reports" rule is a blanket requirement on all those who may be potential holders of unclaimed property. Additionally, reliance upon Section 26 of the Act as statutory authority is misplaced. While Section 26 authorizes the Director to "make necessary rules and regulations to carry out the provisions of the Act" it does not specifically authorize the Department to require "negative reporting." In the absence of any specific statutory authority authorizing the Department to require "negative reporting" it appears evident that the Department's rule is contrary to the legislative intent of the Uniform Disposition of Unclaimed Property Act.

Therefore, the Joint Committee objects to Rules 1.5 and 5 (Rule 6 as originally proposed) and Rule 2 of the Department's "Rules Governing the Uniform Disposition of Unclaimed Property Act," because the Department lacks the statutory authority to limit the exemption from the Act afforded active express trusts, as is attempted in Rules 1.5 and 5, and the Department also lacks the statutory authority to require "negative reports" pursuant to Rule 2.

Date Agency Response Received: December 27, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

DEPARTMENT OF HUMAN RIGHTS

Discrimination in Access to Financial Credit; Exemptions Permitting Inquiries into Pertinent Elements of Credit-Worthiness, the Use of Empirically Derived Credit Systems, and the Establishment of Special Purpose Credit Programs

Initial Publication in Illinois Register: November 19, 1982

Date Second Notice Received: May 23, 1983

Joint Committee Objection: July 12, 1983

Specific Objection:

These rules are designed to delineate what characteristics of a potential borrower may be inquired into by a potential grantor of credit. The rules allow limited inquiry into some, otherwise prohibited characteristics, when these characteristics are used in conjunction with an "empirically derived credit system," developed by the lender. In defining the concept of an

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"empirically derived credit system" in Section 5(a), the points or weights assigned to each attribute are to be "derived from an empirical comparison of sample groups or the population of creditworthy and non-creditworthy applicants of a creditor who applied for credit within a reasonable preceding period of time." (emphasis added)

The Department was asked to define what constitutes "a reasonable preceding period of time" for purposes of this rule. The Department explained that this is a term of art which should be readily understood by any user of these rules. It was asserted that the rules will be of interest only to financial institutions which choose to develop "empirically derived credit systems," and to parties who may wish to challenge each system in proceedings before the Department. The Department felt that this term need not be defined any further.

The Department has not provided any standards that will be used in evaluating "a reasonable preceding period of time." If a financial institution develops such a system and this system is challenged in a proceeding before the Department, then, the Department will look to the system and determine whether the sample group fits the test of "a reasonable preceding period of time." Evidently, the Department would use some standards in making such an evaluation, and according to Section 4.02 of the Illinois Administrative Procedure the standards used in the exercise of discretionary power of an agency are to be stated in the rules. This the Department has declined to do.

Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004.02) requires that the standards utilized in the exercise of agency discretionary powers are to be stated within the rules. The Department's failure to include specific standards within the rule violates Section 4.02 of the IAPA in that the rule fails to specifically state such standards and because those persons affected by the rule are not apprised of the standards used by the Department.

Similarly, the Department was asked to define what constitutes an "empirical comparison" for purposes of these rules. Again, the Department declined to clarify this term stating that it was a term of art and readily understood by users of the rules.

Section 7.04 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1007.04) provides in part, that one of the functions of the Joint Committee is the "promotion of adequate and proper rules by agencies, and an understanding on the part of the public respecting such rules." Section 220.900(b)(3) of the Joint Committee's Operational Rules (1 Ill. Adm. Code 220.900(b)(3)) provides that one of the criteria which the Joint Committee will consider in its review of proposed rulemaking is whether the rules can be understood by the persons and groups they will affect.

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These terms, in their present form, are vague and without further definition would be difficult to understand by the persons and groups they will affect.

Therefore, the Joint Committee objects to Section 5(a) of the proposed rulemaking because the definition of "Empirically Derived Credit Systems" does not contain adequate standards for the Department's evaluation of the adequacy of the system, and because the definition is vague.

Date Agency Response Received: August 8, 1983

Nature of Agency Response: Partial Modification/Partial Refusal

Publication as Adopted in the Illinois Register: August 19, 1983

Effective Date: August 15, 1983

DEPARTMENT OF INSURANCE

Part 919 - Claims Practices
[Emergency]

Initial Publication in Illinois Register: March 18, 1983

Joint Committee Objection: April 19, 1983

Specific Objection:

The emergency amendment deals with claim benefits payable under automobile policies covering the total loss of an insured vehicle. Under the existing rule sales taxes and transfer fees were treated differently depending upon whether or not the insurance company elected to offer a replacement vehicle or a cash settlement to a consumer whose motor vehicle was a total loss. The existing rule gave the insurance company an incentive to select the cash settlement option because it was not required to pay taxes and fees under the cash settlement option. The emergency rulemaking amended this policy and requires insurance companies selecting the cash settlement option to pay sales taxes and transfer fees.

The Joint Committee objects to the emergency rulemaking on the grounds that it is not an emergency in that fails to meet the requirements for emergency rulemaking contained in Section 5.02 of the Illinois Administrative Procedure Act.

Date Agency Response Received: May 12, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Effective Date: February 23, 1983

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Workers' Compensation Experience Reporting Rule (50 Ill. Adm. Code 2903)

Initial Publication in Illinois Register: February 14, 1983

Date Second Notice Received: June 1, 1983

Joint Committee Objection: July 12, 1983

Specific Objection:

The Department of Insurance promulgated this rulemaking in order to implement Section 466 of the Illinois Insurance Code (Ill. Rev. Stat. 1981, ch. 73, par. 1065.13). This rulemaking delineates requirements concerning the reporting of premium, loss and expense experience for workers' compensation and employers' liability insurance, and requires the Director of Insurance to designate a "statistical agent," who must develop a "statistical plan" for the Director's approval. All insurance companies are required, under these rules, to report their experience in accordance with the "uniform statistical plan." The ultimate purpose of the rulemaking is to provide the Director of Insurance with information in such form that he may use it to determine whether particular insurance rate filings should be approved or disapproved.

Section 2903.30 of the rulemaking, which outlines the duties of the statistical agent states, in part, "The designated statistical agent shall, subject to the approval of the Director of Insurance, develop a statistical reporting plan"

Section 2903.40 of the proposed rulemaking, outlines reporting requirements and, in part, states:

Every insurer who is a member or subscriber of the designated statistical agent shall record and report its premium, loss and expense experience to the agent in accordance with the uniform statistical plan developed by the agent and approved by the Director of Insurance. All other insurers must record and report their premium, loss and expense experience to the Director of Insurance in accordance with the uniform statistical plan.

The Department of Insurance was asked to provide the specific statistical plan which it had developed to require the insurance companies to submit the required information. The Department explained that it had not developed a specific plan itself, but that it used the plan of its statistical agent, the National Council on Compensation Insurance (NCCI). That plan is entitled "National Council Workmen's Compensation Unit Statistical Plan Manual."

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Section 466 of the Illinois Insurance Code states, in part, "The Director of Insurance shall promulgate reasonable rules and statistical plans, reasonably adapted to each of the rating systems on file with him . . . which shall be used thereafter by each company in the reporting of its loss and countrywide expense experience" [to help the Director determine whether rating systems meet the requirements of another statute, which imposes specific requirements aimed at providing fair competition] (emphasis added).

The proposed rulemaking constitutes an implementation of the responsibility delegated. The fact that the Director of the Department of Insurance has failed to comply with the statutory requirement that he "shall promulgate reasonable rates and statistical plans . . ." but has, instead, merely required companies to follow the statistical plan developed by NCCI, presents a problem.

The Illinois Appellate Court has ruled, in Garces v. Department of Registration and Education (118 Ill. App. 2d 206, 254 NE2d 622 (1969)) that a State agency may not delegate its authority for approval of schools to any organization independent of it. In the Garces case, the Department was charged with, among other things, determining whether a school was "reputable" for purposes of dental education. The Department, by rule, determined that a school would be considered "reputable" if it either had rules and curricula commensurate with the University of Illinois College of Dentistry, or if it has been approved by the Council of Dental Education of the American Dental Association. Quoting from an earlier case, the Garces case stated that "whether a dental college is reputable or not is a question of fact which the statute submits to the decision of the administrative agency, and no other tribunal is authorized to investigate the facts and exercise judgement and discretion in the matter."

The Garces rationale appears to be equally applicable to the proposed rule, which effectively delegates all of the decision regarding the content of a statistical plan to the NCCI. Sections 2903.30 and 2903.40 of the rules require that the plan be developed by the agent although the rule specifies that the Director must approve the agent's plan. These rules have the effect of potentially prohibiting the Director from carrying out his statutory mandate of developing plan and rules. If these proposed rules are adopted as now written, a recalcitrant agent could force a Director to choose between an unacceptable plan and no plan. It is not likely that the General Assembly intended for the Department to completely delegate the authority conferred on the Director by Section 466 of the Illinois Insurance Code, to another entity.

Therefore, the Joint Committee objects to the rulemaking because the Department is improperly delegating its authority to develop a statistical plan to another entity.

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Date Agency Response Received: September 6, 1983

Nature of Agency Response: Rule Withdrawn by Operation of Law

Publication as Adopted in the Illinois Register: Withdrawn

Effective Date: None

Workers' Compensation Experience Reporting Rule (50 Ill. Adm. Code 2903)

Initial Publication in Illinois Register: February 14, 1983

Date Second Notice Received: June 1, 1983

Joint Committee Objection: July 12, 1983

Specific Objection:

Section 2903.40 of the proposed rulemaking in part, states, "All other insurers must record and report their premium, loss and expense experience to the Director of Insurance in accordance with the uniform statistical plan." The term "all other insurers" means those who are neither members of, nor subscribers to, a rating organization designated as a statistical agent.

Section 466 of the Insurance Code (Ill. Rev. Stat. 1981, ch. 73, par. 1065.13) states in part, "[t]hat no company shall be required to record or report its experience on any basis or statistical plan that differs from that which is regularly employed and used in the usual course of a company's business."

The Joint Committee asked the Department if this provision could ever be used to force an "independent insurance company," (i.e. a non-member, non-subscriber company), to report its information in a format it does not use. The Department replied that it is aware of no company which maintains its information in any format that would not be consistent with the statistical plan. Based on the Department's response, the Department was asked to delete this sentence from the rules; however, the Department declined.

The offensive sentence appears to create a potential conflict with the statute in that it could be used to force an insurance company to file in accordance with the statistical plan even if the plan is different than that which is regularly employed and used in the regular course of the company's business.

For the foregoing reason, the Joint Committee objects to the rulemaking because the Department's rulemaking is in conflict with Section 466 of the Illinois Insurance Code.

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Date Agency Response Received: September 6, 1983

Nature of Agency Response: Rule Withdrawn by Operation of Law

Publication as Adopted in the Illinois Register: Withdrawn

Effective Date: None

DEPARTMENT OF LAW ENFORCEMENT

Rules Governing Individual's Right to Access and Review Criminal
History Record Information - Rules I and II

Initial Publication in Illinois Register: July 22, 1983

Date Second Notice Received: December 2, 1983

Joint Committee Objection: December 15, 1983

Specific Objection:

The Joint Committee objects to Section 1210.30(f) of the Department's proposed rulemaking on the basis that the Department lacks the statutory authority to regulate processing fees imposed by local agencies for access and review to criminal history record information.

Section 1210.30(f) of the Department of Law Enforcement's proposed "Rules Governing Individual's Right to Access and Review Criminal History Record Information" provides that: "Reviewing Agencies may charge a fee not to exceed actual costs or \$25.00 for processing access and review requests, whichever is less" (a "reviewing agency" is defined in Section 1210.10 of the rules as a law enforcement agency or a correctional facility), and Section 1210.20 states that these rules are applicable only to information collected, stored and disseminated by the Department of Law Enforcement.

The Department was asked to provide a citation to the specific statutory authority upon which the imposition of processing fees was based. The Department responded that reviewing agencies are permitted to assess fees for processing access and review requests pursuant to federal regulations included at 28 CFR Chapter I, Part 20 (July 1, 1982). A review of these federal regulations revealed that they do not include any provisions which authorize the imposition of fees by local and state criminal history record information systems, although Subpart C of the regulations does indicate that local and state systems can charge processing fees to the extent that they utilize the services of the Department of Justice information systems. This federal regulation cannot, however, be interpreted to permit the assessment of processing fees for information maintained in a non-Department of Justice system.

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The Department ultimately conceded that it does not have the statutory authority to promulgate any rule which establishes processing fees which may be collected from individuals who wish to review criminal history record information. However, the Department contends that this rule does not establish processing fees, but merely establishes the maximum fees which may be charged by reviewing agencies which have independent authority to collect such fees. However, the Department has been unable to point to any authority for it to establish any fees, maximum or otherwise.

In the absence of statutory authority, it appears that the Department is not authorized to establish maximum fees for processing access and review requests. The Department believes that establishing maximum fees prevents reviewing agencies from implementing higher fees, and it appears that there may be merit in the Department's attempt to control these fees. As the local and state systems are federally funded, and the federal regulations may not permit the imposition of processing fees (although the federal regulations do not specifically prohibit the imposition of such fees), the Department should consider introducing legislation to obtain statutory authority to establish maximum fees, and request an opinion from the Department of Justice as to whether or not this statutory change would violate the federal regulations and endanger the systems' federal funding.

Date Agency Response Received: Pending

Nature of Agency Response: Pending

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

DEPARTMENT OF NUCLEAR SAFETY

Regulations for Radiation Protection, Part K., Rules of Practice in
Administrative Hearings

Initial Publication in Illinois Register: December 3, 1982

Date Second Notice Received: February 8, 1983

Joint Committee Objection: March 22, 1983

Specific Objection:

Proposed Section K.506(d) of the Department of Nuclear Safety's Rules of Practice in Administrative Hearings allows any party to file a response in support of or in opposition to a motion, and also states, in pertinent part, "[t]he moving party

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shall not have the right to reply, except as permitted by the Hearing Officer."

The Joint Committee objects to proposed Section K.506(d) because the section does not provide the standards and criteria by which the Hearing Officer determines whether to permit a moving party to reply to a response, in violation of Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004.02).

Date Agency Response Received: April 29, 1983

Nature of Agency Response: Modified to Meet Objection

Publication as Adopted in the Illinois Register: August 5, 1983

Effective Date: July 22, 1983

Regulations for Radiation Protection, Part K., Rules of Practice in Administrative Hearings

Initial Publication in Illinois Register: December 3, 1982

Date Second Notice Received: February 8, 1983

Joint Committee Objection:

Specific Objection:

Proposed Section K.506(f) authorizes the Hearing Office to recommend to the Director that an Interim Order be issued postponing, vacating, or overturning an Order.

The Joint Committee objects to proposed Section K.506(f) because the section lacks the standards by which the Hearing Officer determines to recommend to the Director that an Interim Order be issued postponing, vacating, or overturning an Order, in violation of Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004.02).

Date Agency Response Received: April 29, 1983

Nature of Agency Response: Modified to Meet the Objection

Publication as Adopted in the Illinois Register: August 5, 1983

Effective Date: July 22, 1983

1983 STATEMENTS OF OBJECTION
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Regulations for Radiation Protection, Part K., Rules of Practice in
Administrative Hearings

Initial Publication in Illinois Register: December 3, 1982

Date Second Notice Received: February 8, 1983

Joint Committee Objection: March 22, 1983

Specific Objection:

Proposed Section K.8(a) provides, in pertinent part, that "[a]ll discovery shall be conducted in a reasonable and timely manner." Section K.802(a) requires a party wishing to orally depose any person to serve a written notice on all such parties a "reasonable time in advance" of the deposition.

The Joint Committee objects to proposed Sections K.8(a), and K.802(a), because the Department has not included the standards limiting the Hearing Officer's power to determine what constitutes a "reasonable and timely manner" of undertaking discovery procedure, and what constitutes a "reasonable time in advance" of a deposition that notice should be served. Sections K.8(a), and K.802(a) thus violate Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004.02).

Date Agency Response Received: April 29, 1983

Nature of Agency Response: Modified to Meet the Objection

Publication as Adopted in the Illinois Register: August 5, 1983

Effective Date: July 22, 1983

Regulations for Radiation Protection, Part K., Rules of Practice in
Administrative Hearings

Initial Publication in Illinois Register: December 3, 1982

Date Second Notice Received: March 22, 1983

Joint Committee Objection: March 22, 1983

Specific Objection:

Section K.807(a) allows the Hearing Officer to require an offending party to pay the aggrieved party the amount of the reasonable expenses incurred in obtaining an order to answer, or in opposing an order if the party's refusal to answer was without good cause or if the motion to answer is denied.

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The Joint Committee objects to Section K.807(a) as in violation of Section 4.02 of the Illinois Administrative Procedure Act

(Ill. Rev. Stat. 1981, ch. 127, par. 1004.02), because the Department has failed to include the standards the Hearing Officer utilizes to determine whether to require an offending party to pay the aggrieved party the amount of reasonable expenses incurred in obtaining the order to answer or in opposing an order if the party's refusal to answer was without good cause, or if the motion to answer is denied.

Date Agency Response Received: April 29, 1983

Nature of Agency Response: Modified to Meet the Objection

Publication as Adopted in the Illinois Register: August 5, 1983

Effective Date: July 22, 1983

Regulations for Radiation Protection, Part K., Rules of Practice in Administrative Hearings

Initial Publication in Illinois Register: December 3, 1982

Date Second Notice Received: February 8, 1983

Joint Committee Objection: March 22, 1983

Specific Objection:

Proposed Section K.807(a) allows the Hearing Officer to require a party to answer, if the party fails to answer any interrogatory served upon him and the proponent of the interrogatory moves for an order to compel an answer.

The Joint Committee objects to Section K.807(a) as in violation of Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par 1004.02) because the Department has failed to add the standards by which the Hearing Officer determines whether to require a party to answer the interrogatory, following a motion to compel an answer.

Date Agency Response Received: April 29, 1983

Nature of Agency Response: Modified to Meet the Objection

Publication as Adopted in the Illinois Register: August 5, 1983

Effective Date: July 22, 1983

1983 STATEMENTS OF OBJECTION
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Regulations for Radiation Protection, Part K., Rules of Practice in
Administrative Hearings

Initial Publication in Illinois Register: December 3, 1982

Date Second Notice Received: February 8, 1983

Joint Committee Objection: March 22, 1983

Specific Objection:

Proposed Section K.16 states that all parties may file a proposal for a settlement or compromise with the Hearing Office and that all cases shall be disposed of by an order of the Director. Section K.16(b) states:

The Director shall consider such proposed settlement and stipulation and the hearing record. The Director may accept, suggest revisions, or reject the proposed settlement and stipulation, or direct further hearing as it appears appropriate.

The Joint Committee objects to Section K.16(b) because the Department has failed to include the standards by which the Director determines whether to accept, to suggest revisions, or to reject the proposed settlement and stipulation, or to direct further hearings following consideration of the proposed settlement and of the hearing record.

Date Agency Response Received: April 29, 1983

Nature of Agency Response: Modified to Meet the Objection

Publication as Adopted in the Illinois Register: August 5, 1983

Effective Date: July 22, 1983

Regulations for Radiation Protection, Part K., Rules of Practice in
Administrative Hearings

Initial Publication in Illinois Register: December 3, 1982

Date Second Notice Received: February 8, 1983

Joint Committee Objection: March 22, 1983

Specific Objection:

Section K.505(d) permits the Hearing Officer to allow amendments to pleadings upon proper notice "upon good cause."

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Section K.506(b) authorizes the Hearing Officer to grant a motion for continuance "upon good cause shown."

Section K.801(a) allows the Director or Hearing Officer to annul or modify the subpoenas "for good cause shown."

Section K.805(a) authorizes the Hearing Officer to order a party to submit to a physical examination (if physical condition is at issue) "upon good cause shown."

Section K.807(a) allows the Hearing Officer to order an offending party to pay to the aggrieved party reasonable expenses incurred in obtaining the order, if the offending party's refusal to answer was without good cause.

Section K.11(c) prescribes the proper chronological order of administrative hearings, "subject to modification by the Hearing Officer for good cause."

The Joint Committee objects to Sections K.505(d), K.506(b), K.801(a), K.805(a), K.807(a), and K.11(c) because the Department fails to include the standards utilized by the Hearing Officer to determine the existence of "good cause."

Date Agency Response Received: April 29, 1983

Nature of Agency Response: Modified to Meet the Objection

Publication as Adopted in the Illinois Register: August 5, 1983

Effective Date: July 22, 1983

Licensing Persons in the Practice of Medical Radiation Technology (32 Ill. Adm. Code 401)

Initial Publication in Illinois Register: August 5, 1983

Date Second Notice Received: October 20, 1983

Joint Committee Objection: November 17, 1983

Specific Objection:

The Joint Committee objects to Sections 401.10(a), 401.40, 401.60, and 401.70, because these sections appear to lack statutory authority for requiring that an examination be taken by an applicant in order to obtain a license for the practice of medical radiation technology.

Section 401.10(a) sets forth the elements of the Department of Nuclear Safety's licensure program for persons who apply radiation to human beings. These elements include in part:

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- 1) Procedures for examination of applicants,
- 2) Preparation and analysis of examinations, and
- 3) Establishment of frequency and sites for examinations

Section 401.40, entitled "Requirements for Application for Examination" specifies the requirements an applicant for licensure is to meet, such as completing an approved course of study in medical radiation technology, being a graduate of a high school, being at least 18 years of age, and paying the appropriate application fee.

Section 401.60, entitled "Examination Requirements" provides that any person applying for licensure shall pass a written examination for licensure as a Medical Radiographer, Nuclear Medicine Technologist, or Radiation Therapy Technologist. Section 401.60 also establishes the subject areas included on the examination.

Section 401.70, entitled "Alternative Examination" specifies the examinations of various professional organizations which will be accepted by the Department in lieu of the Department's examination.

As statutory authority for this rulemaking the Department cited Sections 4, 4.1, 4.2, and 7.1 of the Radiation Protection Act. (Ill. Rev. Stat. 1982 Supp., ch. 111 $\frac{1}{2}$, §§214, 214.1 214.2, and 217.1) These sections were amended or added by P.A. 82-901 (SB-1492), effective January 1, 1983. Section 4 provides that no technician, nurse, or other assistant acting under the supervision of a licensed practitioner may administer radiation to human beings after January 1, 1984 unless accredited by the Department. Pursuant to Section 4.1, the Department is charged to promulgate such rules and regulations as are necessary to establish a "minimum course of education and continuing education requirements" for such individuals and to provide for accreditation on the basis of experience and skill for those who have been employed in the field of administering radiation to human beings not less than 24 of the 48 months immediately preceding January 1, 1984. As these provisions deal only with education requirements and accreditation on the basis of skill and experience for experienced persons, the Joint Committee asked the Department to cite the statutory authority requiring that all applicants for licensure pass an examination before being licensed by the Department.

The Department responded with two arguments. First, the Department pointed out that Section 4.1 of the Act requires the rules and regulations of the Department to "be consistent with national standards in regards to the protection of the health and safety of the general public" and argued that

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national standards for "credentialing" (or licensing) medical radiation technologists include passage of an examination. In support of its contention the Department cited proposed Federal standards for the credentialing of technologists. These standards, while not mandatory on states, follow the requirements of voluntary, nationally recognized accrediting agencies and require passage of an examination to test knowledge and competency. (48 Fed.Reg. (1983) at 31966, 31967, and 31974)

This argument is unpersuasive in view of the plain language of the statute. Section 4.1 states, "The Department shall promulgate such rules and regulations as are necessary to establish a minimum course of education and continuing education requirements . . . The rules and regulations . . . shall be consistent with national standards . . ." (emphasis added) It is clear that the first sentence establishes the scope of authorized Department rulemaking and that the second sentence limits that authority - the Department shall prescribe a minimum course of education and continuing education requirements by rule, but these rules on education must be consistent with Federal regulations. The Department, on the other hand, would read the second sentence almost as an additional grant of rulemaking authority under which the Department could do anything consistent with national standards. It would appear that, as it has done in numerous licensing statutes, the legislature would itself have specified that an examination be required if it believed an examination to be necessary.

The Department's second argument in favor of an examination is based on the third sentence of Section 4.1 of the Act which directs the Department to provide for accreditation based upon experience and skill. The Department stated that the only way to measure "skill" would be through the use of an examination. However, the third sentence of Section 4.1 deals only with accreditation of nurses, technicians and other assistants who have been employed in the field of administering radiation for not less than 24 of the 48 months immediately preceding January 1, 1984. Thus, the Department's argument regarding the measurement of skill can at best justify an examination only for those of the requisite experience, and, as explained below, the requirement of an examination for experienced persons appears to exceed the Department's authority.

The legislative history of SB-1492 indicates that an examination requirement for persons with 24 months experience is contrary to the legislative intent behind the third sentence of Section 4.1. This provision was in the bill from the beginning in its present form, but the first recorded floor debate concerning "grandfathering" occurred on the third reading in the House. Debate transcripts show that the House sponsor of the bill, Representative Meyer, explained that the grandfather clause

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included in the bill was not automatic. One would not be able to simply begin practice 10 days prior to the effective date of the Act and be grandfathered in. Rather, one would have to have been employed in the field for a while. He also stated that the Accreditation Board would determine how much experience and how much skill would be necessary. (Transcription Debate-House of Representatives, June 24, 1982; pp. 145-147)

A more thorough discussion of the provision occurred on concurrence in the Senate. In response to questioning from Senators Sommer and Bloom, Senator Marovitz, the bill's Senate sponsor, explained grandfathering under Section 4.1. He stated that persons already licensed (by private organizations) to administer radiation would be grandfathered in without any additional requirements. He continued,

Well, there are people who are not licensed presently to do this and have . . . have no training requirement, but if they can . . . if they exhibit to the department that they have been doing this, then they would be allowed . . . to continue to do it without any additional training requirements.

Three more times in the course of this discussion Senator Marovitz indicated that there would be no new requirements on persons with 24 months experience in the 48 months immediately preceding January 1, 1984. When asked by Senator Rhoads whether such grandfathering might defeat the purpose of the Bill, Senator Marovitz elaborated further. Individuals who did not administer X-rays regularly and had no expertise would have to get training in accordance with the Department's requirements because, to be accredited, individuals would have to establish that they had been practicing for twenty-four of the previous forty-eight months and would have to have the approval of the supervising licensed practitioner. He pointed out that the Department would be unable to investigate everybody in the State who administered radiation. (See Senate Debate Transcription for June 18, 1982; pp.12-27)

Thus, it would appear that, even as to those experienced individuals who are to be accredited on the basis of skill and experience, the requirement of an examination is contrary to legislative intent.

Sections 401.10(a), 401.40, 401.60, and 401.70 set up examination requirements for licensure of radiation technologists (accreditation of nurses, technicians, and other assistants). In so doing they exceed the Department's authority to accredit on the basis of education or, in the case of those with 24 months experience, skill and experience, under Section 4.1 of the Radiation protection Act.

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Date Agency Response Received: December 14, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: December 30, 1983

Effective Date: January 1, 1984

Licensing Persons in the Practice of Medical Radiation Technology (32 Ill.
Adm. Code 401)

Initial Publication in Illinois Register: August 5, 1983

Date Second Notice Received: October 20, 1983

Joint Committee Objection: November 17, 1983

Specific Objection:

The Joint Committee objects to Section 401.60(e) and Section 401.130(a)(3) because the Department lacks the statutory authority to charge an application fee for an examination.

Section 401.60(e), entitled "Examination Requirements," requires a person to pay the \$25 application fee, and Section 401.130(a)(3) provides that an examination by the Department shall cost \$25 per application.

As the Radiation Protection Act provides only for a \$25 fee for accreditation (Ill. Rev. Stat. Supp. 1982, ch. 111 $\frac{1}{2}$, §214.2), the Joint Committee asked the Department whether these fees were two separate fees or just two references to the same fee. The Department responded that the application fee is different than the licensure fee; the Department will be charging \$25.00 per each application for an examination in addition to the \$25.00 licensure fee.

With regard to its authority to charge a fee for examinations, the Department merely stated that the \$25.00 fee per application for the examination is a reasonable charge which will cover the Department's expense for contracting the examination.

Section 4.2 of the Act states in part that "The application fee for accreditation or renewal shall be \$25.00." The Act contains no other provision regarding the establishment of fees related to accreditation. Furthermore, the Department's rulemaking authority does not appear to be broad enough to allow the Department to require an examination, much less a fee for taking it.

Date Agency Response Received: December 14, 1983

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TO PROPOSED RULES

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: December 30, 1983

Effective Date: January 1, 1984

Licensing Persons in the Practice of Medical Radiation Technology (32 Ill.
Adm. Code 401)

Initial Publication in Illinois Register: August 5, 1983

Date Second Notice Received: October 20, 1983

Joint Committee Objection: November 17, 1983

Specific Objection:

The Joint Committee objects to Sections 401.100(b), 401.110(b), and 401.120 because the Department lacks the statutory authority to suspend or revoke a license for medical radiation technology.

Sections 401.100(b) and 401.110(b) provide that an active license shall be for five years unless the license is surrendered, revoked, or the privileges of practice suspended by the Department as specified by Section 401.120. Section 401.120 states that "The Department shall deny, suspend for a fixed period, or revoke a license for any violation of the statute or regulations, or for a physical or mental condition which would impair ability to perform medical radiation technology."

The Joint Committee asked the Department to cite the Department's statutory authority to revoke a license. The Department stated that Section 12 of the Act provides the Department the authority to revoke or suspend a license. Section 12 of the Act provides in part that "... whenever the Department finds that a condition exists which constitutes an immediate threat to health due to the violation of any provisions of this Act or any code, rule, regulation or order promulgated under this Act and requiring immediate action to protect the public health or welfare, it may issue an order reciting the existence of such an immediate threat and the findings of the Department pertaining thereto." It further authorizes the Department to "summarily cause the abatement of violation" or to obtain an injunction against the violator. The Department explained that it would need to be able to revoke a license if, for example, there were a radiation technologist who was administering dangerously high levels of radiation.

Under Section 12 of the Act, however, the Department may issue an order which recites the existence of a threat and the

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Department's findings. Any order it may issue thereunder would be related to abatement of the violation. Nothing in Section 12 provides for revocation of any license or accreditation. That Section 12 was not meant to apply to revocation or suspension is borne out by Section 6c of the Act which specifically requires the Department to adopt rules and regulations for the amendment, suspension, or revocation of licenses for the use, manufacture, or distribution of radioactive devices.

Furthermore, under both Section 401.120 of the rules and Section 12 of the Act, there must be a violation of the Act or the rules before the Department may take action. In conference, the Department could not suggest a single rule or provisions of the Act that a technologist could violate.

Sections 4 through 4.2 of the Radiation Protection Act set up a system for accreditation on the basis of education or experience and skill. They do not in any other way regulate the field of administering radiation, and they do not provide for loss of accreditation for any reasons. Rather, accreditation under the Act appears to have been envisioned that someone has met certain educational requirements.

Date Agency Response Received: December 14, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: December 30, 1983

Effective Date: January 1, 1984

Licensing Persons in the Practice of Medical Radiation Technology (32 Ill. Adm. Code 401)

Initial Publication in Illinois Register: August 5, 1983

Date Second Notice Received: October 20, 1983

Joint Committee Objection: November 17, 1983

Specific Objection:

The Joint Committee objects to Section 401.30(b) and (c) because the Department lacks the statutory authority to exempt students or other individuals from the requirements of the Radiation Protection Act.

Section 401.30(b) provides that the Department shall grant exemptions from the rules or regulations as it determines are authorized by law and will not result in a hazard to the public safety. Section 401.30(c) states that exemptions include, but are not limited to, dental assistants under the supervision of a

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licensed dentist and students enrolled in approved programs for medical radiography, nuclear medicine technology, radiation therapy technology, medicine, osteopathy, podiatry, dentistry, chiropractic, dental hygiene, or dental assistance, who apply radiation to human beings in the course of study and while under the supervision of a licensed practitioner.

Section 4 of the Radiation Protection Act provides:

No person shall intentionally administer radiation to a human being unless such person is [a licensed practitioner] or, as technician, nurse or other assistant, is acting under the supervision, prescription or direction of such licensed person. However, no such technician, nurse or other assistant acting under the supervision of [a licensed practitioner other than a dentist] shall administer radiation to human beings after January 1, 1984 unless accredited by the Department of Nuclear Safety.

As the Act itself provides for no exemptions other than for dental assistants, the Joint Committee asked the Department to cite its statutory authority for granting exemptions.

The Department stated that national standards allow for the exempting of students in proposed 42 C.F.R. 75.3(b) and that, under Section 4.1 of the Act, its rules are to be consistent with national standards. However, the Department lacks the statutory authority to adopt all national standards. Section 4.1 of the Act specifies that the Department has the authority to promulgate rules and regulations necessary to establish a minimum course of education and continuing education requirements which shall be in compliance with the national standards. Section 4.1 does not address the issue of exemptions. In any event, given a conflict between consistency with national standards and clear statutory language, the statutory language should prevail.

The Department also cited Section 6a(3) of the Act as statutory authority to exempt individuals from accreditation.

However, Section 6a(3) is clearly inapplicable. It pertains only to the exemptions from licensing of "by-product materials, source materials, specific nuclear materials, or devices or equipment utilizing or producing such materials."

Date Agency Response Received: December 14, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: December 30, 1983

Effective Date: January 1, 1984

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Licensing Persons in the Practice of Medical Radiation Technology (32 Ill. Adm. Code 401)

Initial Publication in Illinois Register: August 5, 1983

Date Second Notice Received: October 20, 1983

Joint Committee Objection: November 17, 1983

Specific Objection:

The Joint Committee objects to Sections 401.20; 401.50(b); 401.60(b); 401.80; 401.90; 401.100(d), (e), (f), and (g); 401.110(c) and (d); and 401.130(a)(1) because the Department lacks the statutory authority to issue conditional or temporary licenses.

Sections 401.20, 401.50(b), 401.60(b), 401.80, 401.90, 401.100(d), (e), (f), and (g), 401.110(c) and (d), and 401.130(a)(1) provide for licensing on a temporary or conditional basis. A temporary license will be issued when the individual has complied with the Department's education and/or experience requirements and is awaiting examination. The license will be valid for a period of not more than twelve months. A conditional license will be issued to a person who practices in a locality where there is substantial evidence that adequate health care would be denied in the locality because of the unavailability of licensed person, on the basis of a medical hardship, to a person who has in at least 24 of the 48 months prior to January 1, 1984 been employed in the practice of medical radiation technology, but who has not yet taken the examination, and to a person who has passed an alternative examination but who has not met the experience requirement of 24 months experience in the 48 months preceding the date of application. The conditional license shall not be valid for more than a period of two years. The Department charges a fee of \$25 for such licenses, and the applicant must pay another \$25 fee to obtain the five year active license.

The Joint Committee asked the Department to cite the Department's statutory authority to issue a temporary or conditional license. The Department explained that temporary and conditional licenses are issued in other states in accordance with the national standards of such organizations as the Conference of Radiation Control Program Directors, Inc. (A Report of Task Force on Credentiating of Radiation Allied Health Operators - Section II (1982)).

However, Section 4.1 of the Act only empowers the Department to establish rules and regulations for a minimum course of education and continuing education which shall be in

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compliance with national standards. It also requires rules for accreditation on the basis of skill and experience, but only for those with 24 months experience in the 48 months immediately prior to January 1, 1984. In addition, Section 4.2 states in part that "Accreditation shall be renewed every 5 years."

The Act provides for accreditation for five year periods on the basis of education requirements or experience prior to January 1, 1984. The Department's temporary or conditional licenses are for one or two years' duration. As the Department's scheme conflicts with that of Sections 4 through 4.2 of Radiation Protection Act, the Joint Committee objects to Sections 401.20, 401.50(b)(2) and (3), 401.60(b)(2) and (3), 401.80, 401.90, 401.100(d), (e), (f), and (g), 401.110(c) and (d) and 401.130(a)(1).

Date Agency Response Received: December 14, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: December 30, 1983

Effective Date: January 1, 1984

Licensing Persons in the Practice of Medical Radiation Technology

Initial Publication in Illinois Register: August 5, 1983

Date Second Notice Received: October 20, 1983

Joint Committee Objection: November 17, 1983

Specific Objection:

The Joint Committee objects to Section 401.90 and Section 401.140(b) and (d) because the Department lacks the statutory authority to require that an applicant meet clinical practice requirements as a condition of licensure for the practice of medical radiation technology.

Section 401.90 and Section 401.140(d) establish that as a condition of licensure each applicant for initial licensure or licensure renewal shall complete a clinical practice requirement which shall consist of not less than 24 of the preceding 48 months in employment or full-time enrollment for training in an accredited educational program.

The Joint Committee asked the Department to cite the statutory authority which empowers the Department to require clinical practice as a requirement for licensure. The Department stated that clinical practice is a national standard which is established in 42 C.F.R. 75.3 Appendices A, D, and E (1983).

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However, Section 4.1 of the Act only empowers the Department to establish rules and regulations for a minimum course of education and continuing education requirements which shall be in compliance with national standards. The statute does not provide for the promulgation of rules and regulations for clinical practice which shall be in accordance with national standards. Section 4.2 of the Act specifies that "Each such application for accreditation or renewal shall be accompanied by proof of compliance with the minimum or continuing education requirements as the case may be."

Date Agency Response Received: December 14, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: December 30, 1983

Effective Date: January 1, 1984

DEPARTMENT OF PUBLIC AID

Payment Methodology (Hospitals) (89 Ill. Adm. Code 140.101 - 140.115)

Initial Publication in Illinois Register: April 1, 1983

Date Second Notice Received: May 18, 1983

Joint Committee Objection: June 7, 1983

Specific Objection:

Section 140.364 concerns the utilization maximums which the Department will calculate for each hospital. The utilization maximum is the number of patient-days for which the Department will reimburse a hospital. The rule provides that the base utilization maximum is calculated according to Section 5-5.11 of the Public Aid Code and Rule 4.13.8 of the Department. The Department will then modify it according to the following language of Section 140.364:

The previous fiscal year base will be modified for changes in caseload, changes in coverage of program eligibility categories, to correct documented errors, to take into account hospitals' actual utilization experience, and for any reallocation of days for hospital inpatient service bidding and other capitation programs.

The Department has no formula at this time for modifying the base. The position of the Department is that the hospitals will be told how the modification occurs, and that the factors listed above will be taken into consideration. The position of the

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Department is that there is no need to include the formula, even though it would be a standard calculation with different data for each hospital. The Department claims that the listing of factors is specific enough and that the hospitals already have an opportunity to protest an assignment of a utilization maximum.

Section 4.02 of the IAPA requires a rule which implements a discretionary power to be exercised by an agency to include standards by which to guide the agency's exercise of that power. Because Section 140.364 does not contain standards to guide the exercise of the Department's discretion to modify a hospital's base utilization maximum, the Joint Committee objects to Section 140.364.

Date Agency Response Received: July 6, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: July 15, 1983

Effective Date: July 5, 1983

Payment Methodology (Hospitals) (69 Ill. Adm. Code 140.101 - 140.115)

Initial Publication in Illinois Register: April 1, 1983

Date Second Notice Received: May 18, 1983

Joint Committee Objection: June 7, 1983

Specific Objection:

Section 140.372 of the proposed rules, which establishes a payment methodology for hospitals, sets a review procedure for hospitals to contest the rates and utilization maximums set by the Department. Section 140.372 states:

Hospitals shall be notified of their in-patient rate and utilization maximum for the rate year and shall have an opportunity to request a review of the rate and utilization maximum for errors in calculation. Such a request must be received in writing by the Department within 20 days of the date of the Department's notice to the hospital of their rates and maximums. The Department shall notify the hospital of the results of the review within 30 days of receipt of the hospital's request for review. [emphasis added]

Since this reimbursement system involves Federal funding, any state plan must comply with Federal Medicaid regulations.

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Applicable Federal regulations are found in Part 447 of Title 42 of the Code of Federal Regulation, "Payments for Services." 42 CFR 447.252(e) states:

Provider appeals. The Medicaid agency must provide for a system of provider appeals, as specified in Section 447.258.

The Illinois Department of Public Aid is the State's Medicaid agency.

42 CFR 447.258 states:

The agency must provide an appeals procedure that allows individual providers an opportunity to submit additional evidence and request prompt administrative review of payment rates. [emphasis added]

The proposed rulemaking only provides for a review of the rate for errors in calculation. There is no provision for the provider to submit additional evidence to the Department. While the time limits set by the Department would probably qualify as a "prompt administrative review" of the rates, the review itself does not meet the Federal requirements.

One of the criteria for the Joint Committee's review of an agency's proposed rules is whether each part of the rulemaking complies with state and Federal constitutions, state and Federal law, and case law (1 Ill. Adm. Code 220.900(a)(3)). The Federal regulations cited are part of the body of Federal law. The proposed rule of the Department does not comply with the applicable Federal law. Therefore, the Joint Committee objects to Section 140.372 of the proposed rules of The Department of Public Aid.

Date Agency Response Received: July 6, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: July 15, 1983

Effective Date: July 5, 1983

Reimbursement for Nursing Costs-Geriatric Residents (89 Ill. Adm. Code 140.900 - 907)

Initial Publication in Illinois Register: January 17, 1983

Date Second Notice Received: May 13, 1983

Joint Committee Objection: June 7, 1983

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Specific Objection:

The Department of Public Aid has proposed this rule to cover the reimbursement of the nursing costs for geriatric residents in group care facilities. The first notice of proposed rulemaking was published in the Illinois Register on January 17, 1983. In both the first notice to the public and the second notice to the Joint Committee, the Department made the following statement:

The rates determined from assessments based on these proposed revisions will be effective July 1, 1983. This means that public health surveyors must use the revised guidelines for assessments conducted from January through June 1983.

The reimbursement system operates prospectively; that is, the Department of Public Aid will assess the needs of a resident population in a particular facility during a certain six month period in order to set the reimbursement rate for the next six month period. The assessment procedure itself consists of surveys of the nursing homes by nurses employed by the Illinois Department of Public Health (IDPH) as agents of the Department of Public Aid (IDPA). The surveys involve IDPH's evaluation of the nature and scope of nursing services rendered to a random sampling of the residents of a facility, or the entire population if it exceeds a certain number. Specifically, IDPH determines the level of nursing care actually provided to each resident in the sample to meet his or her needs, such as eating, bathing, administering medicine, etc. The current assessment rule, Rule 4.1494, which the proposed rule would replace, contains extensive assessment guidelines to evaluate the level of care rendered to residents. After making the foregoing evaluation, IDPA arrives at the appropriate reimbursement rate by using various tables setting forth allowable minutes to provide each service and the average salary for the nursing professional who renders the service.

The Department has already begun to use the amended standards in the proposed rulemaking as the basis for assessing resident needs for future reimbursement periods. This policy of using guidelines not yet adopted is clearly stated in its notices of proposed rulemaking.

In addition to the policy of using the unadopted guidelines for the assessments being done in the period of January 1, 1983 to June 30, 1983, the Department has failed to comply with its own assessment procedures in the current Rule 4.1494. Under Rule 4.1494, surveys should have been done during the period of July 1, 1982 through December 31, 1982, to establish the reimbursement rate for the period of January 1, 1983 through June 30, 1983. In fact, for a large number of homes in Chicago, no assessment survey was done between July 1, 1982

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and December 31, 1982. As a result of this failure to comply with its own requirements, on March 25, 1983, the Department set out two options for those facilities which had not been surveyed to set rates for January 1, 1983-June 30, 1983. The Department required the nonsurveyed facilities to accept a freeze of the July 1, 1982 - December 30, 1982 rate until June 30, 1983, or to agree to a survey between January 1, 1983 and June 30, 1983, to set the rate for between April 1, 1983 and December 31, 1983. For the period from January 1, 1983 to March 30, 1983, the facility would receive the rate that had been set for reimbursements from July 1, 1982 to December 31, 1982.

This policy of the Department resulted in a *de facto* amendment to Rule 4.1494 by eliminating the policy of conducting surveys every six months to set the rate for the next six months. In response to the Department's attempt to impose these "options," a number of the affected facilities brought suits in the United States District Court for the Northern District of Illinois to enjoin the implementation of the March 25, 1983 "options." These matters are still pending.

The second option of the Department would operate in such a manner that the proposed guidelines in Section 140.900 *et seq.* would be used to set rates effective April 1, 1983 for some facilities. This would go beyond the policy in the notices of proposed rulemaking that these assessment guidelines would be used to set rates which would go into effect July 1, 1983.

The stated position of the Department is that the operative portion of this proposed rulemaking involves the setting of rates, and that these rates will not become effective until July 1, 1983. This position ignores the reality of the situation on two counts. First, the proposed rule created new assessment guidelines which altered the previously used guidelines. It could be premature for a facility to conform its conduct to a proposed rule which may be completely altered by the time of its final enactment. Second, it is clear from the policy pronouncement of March 25, 1983 that the Department intends to use the proposed standards to establish the rates for some facilities as early as April 1, 1983.

Section 4(c) of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1981, ch. 127, par. 1004(c), states in part:

No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act. (emphasis added)

The Department's use of the proposed guidelines before their formal adoption to set rates for the July 1, 1983 - December

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31, 1983 period appears to be a purpose for which the rule is being invoked. If the use of these proposed guidelines to set rates for a period of time after their formal adoption appears to be an invocation of this rule, then its use to set rates which will be effective before their formal adoption is most certainly a purpose for which the rule is being invoked.

Further evidence of the tenuous nature of the Department's argument is found in Section 5.01 of the Act. Section 5.01 sets out the procedures for general rulemaking, and it is applicable to this proposed rulemaking. Paragraph (c) of Section 5.01 states in part:

Each rule hereafter adopted under this Section is effective upon filing, unless a later date is required by statute or is specified in the rule.

This section clearly provides that adopted rules are to be effective no sooner than the date of their filing. The statute says nothing concerning the retroactive effectiveness of a rule, which would be the result of this proposed rulemaking. To accept the argument of the Department would be to render the public comment requirements of the Act superfluous. The Department would be using guidelines which should properly have been subjected to public scrutiny prior to their adoption and use. Instead, the Department is using the guidelines while it is soliciting public comment prior to adoption.

Therefore, the Joint Committee objects to the proposed rulemaking of the Department of Public Aid, "Reimbursement for Nursing Costs for Geriatric Residents in Group Care Facilities," 89 Ill. Adm. Code 140.900 et seq., because the Department will set reimbursement rates for affected facilities based on amended guidelines contained in this proposed rulemaking prior to its adoption, in violation of §§ 4(c) and 5.01(c) of the Illinois Administrative Procedure Act.

Date Agency Response Received: July 5, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: July 15, 1983

Effective Date: July 1, 1983

Reimbursement for Nursing Costs-Geriatric Residents (89 Ill. Adm. Code 140.900 - 907)

Initial Publication in Illinois Register: January 17, 1983

Date Second Notice Received: May 13, 1983

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Joint Committee Objection: June 7, 1983

Specific Objection:

Section 140.907 of the proposed rules of the Department of Public Aid deals with the determination of sufficient staffing in the facility providing care to geriatric recipients. In subsection (a) the Department has the requirement that each facility must file a quarterly staffing report with the Department. The report must contain detailed information on the number of hours paid and hours worked for all registered nurses, licensed practical nurses, and certain other employee classifications. The use to which this staffing data will be put is explained in Section 140.907(b) which states:

The staffing data will be compared to the amount of nursing time required, based on the assessment, to meet the needs of the residents. If the facility's actual staffing level is below what it should be to meet the resident's needs, the facility will be referred to the Department of Public Health where a determination will be made whether an inspection of the facility to determine the adequacy and quality of care is necessary.

This language is identical to the language on the subject in Rule 4.1494, which the proposed rulemaking is designed to replace.

The Illinois Health Care Association (IHCA) has filed a suit based on a predecessor regulation to Rule 4.1494. The suit concerned the reimbursement system for nursing facilities. This suit, Illinois Health Care Association v. Miller, (77 C 1109), was brought in Federal Court in the Northern District of Illinois, Eastern Division. The case attacked the system then used by the Department for reimbursements of nursing facilities. The case was settled by means of a consent decree on July 15, 1981. The consent decree required the Department to develop by July 1, 1982 a cost reimbursement system that would, among other things, assure that

[t]he amount paid a facility for nursing costs shall be reduced to the extent that a facility does not or did not in any prior quarter have reasonably sufficient staff present in the facility to provide care and services determined to be necessary under paragraph (ii) above. IDPA shall determine the amount of the reduction. This reduced amount shall continue to be paid until such time as the facility proves it has sufficient staff to meet the patient load. (Consent Decree, par. 5(b)(2)(v))

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The language of proposed Section 140.907(b) does not appear to conform to the requirements of the quoted language of the consent decree to which the Department was a party. The court decree specifically calls for a reduction in the amount reimbursed to the facility. Section 140.907(b) provides only a general, undefined, nonspecific procedure to refer cases of admitted insufficient staffing to the Illinois Department of Public Health. The procedure of referral may be independently useful, but it is unrelated to the reduction requirement of the Consent Decree.

In response to public comment on this matter, the Department stated that its position is that the proposed language of the rule does not violate the Consent Decree. The Department contends that it has only recently received the staffing information from individual facilities necessary to determine what should be done when facility staffing does not appear adequate.

The position of the Department, however, does not take into account the fact that the Consent Decree required the Department to have in effect, by July 1, 1982, a procedure which would provide for a reimbursement reduction to inadequately staffed facilities. The proposed language of Section 140.907(b) does not meet the requirements of the Consent Decree.

One of the criteria for the Joint Committee's review of proposed rulemaking is whether each part of the rulemaking complies with state and federal constitutions, state and federal law, and case law, 1 Ill. Adm. Code 220.900(a)(3). The proposed rulemaking does not comply with the requirements of the Consent Decree of a United States District Court, a decree into which the Department entered in order to bring an end to litigation. By its terms, the decree went into effect immediately upon its entry on July 15, 1981. Almost a year after compliance was required, the Department has failed to institute a method for reducing the rates to the understaffed facilities.

Therefore, the Joint Committee objects to Section 140.907(b) of the proposed rules of the Department of Public Aid, because the proposed rule does not comply with the consent decree in Illinois Health Care Association v. Miller, in violation of the Joint Committee's review criterion at 1 Ill. Adm. Code 220.900(a)(3).

Date Agency Response Received: July 5, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: July 15, 1983

Effective Date: July 1, 1983

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Reimbursement for Nursing Costs-Geriatric Residents (89 Ill. Adm. Code 140.900 - 907)

Initial Publication in Illinois Register: January 17, 1983

Date Second Notice Received: May 13, 1983

Joint Committee Objection: June 7, 1983

Specific Objection:

Section 140.905(g) of the proposed rules on the reimbursement for nursing costs for geriatric residents in group care facilities deals with the determination of the facility rates. The rates are based on an assessment of residents done by a nurse from the Illinois Department of Public Health. The nurse observes the residents and reviews the charts of the residents in making the determinations used to set rates according to the level of care necessary and the appropriate times for each function.

It is the policy of the Department that the facility may have a staff person accompany the Public Health nurse during the assessment process. The Department, however, has refused to include this information in the rule. The facility has the right to have a staff person witness the assessment. The Department acknowledges this right. Unanswered is the question of how the facility will learn of this right. If the facility asks, the Department will answer, but the Department will not volunteer the information independently.

Section 5(a) of the IAPA requires an agency to complete the appropriate rulemaking procedures prior to adoption or amendment of any rule. The right to have a staff person available during the assessment is a "rule" under Section 3.09 of the IAPA. It is an agency statement, albeit undivulged, that prescribes policy. Because the proposed rule does not include the Department's policy on the right of the facility to have a staff person accompany the IDPH nurse, the section is not being adopted in accordance with the IAPA. Therefore, the Joint Committee objects to proposed Section 140.905(g).

Date Agency Response Received: July 5, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: July 15, 1983

Effective Date: July 1, 1983

Copayment on Hospital Services (89 Ill. Adm. Code 140.98)

Initial Publication in Illinois Register: April 1, 1983

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Date Second Notice Received: May 17, 1983

Joint Committee Objection: June 14, 1983

Specific Objection:

Proposed Section 140.350, "Copayments," of the Department of Public Aid's rules concerning payments to medical providers is essentially a promulgation, through regular rulemaking procedures, of the policies instituted by emergency rulemaking at 89 Ill. Adm. Code 150.80. The emergency rulemaking instituted a policy by which some recipients were to pay a small portion of the cost of some of inpatient and outpatient hospital services and clinic services. The first notice of proposed rulemaking for Section 140.350 established the same categories of services and rates which were already in existence under the emergency rulemaking. The second notice of proposed rulemaking, deleted the requirement for copayments for outpatient hospital and clinic services.

On May 20, 1983, the Department instituted a change in policy. In "AABD Manual Release No. 83.18" and "AFDC Manual Release No. 83.24," there appeared the following lead paragraph:

This release changes policy regarding copayments. Effective with the date of this release, copayments apply only to inpatient hospital stays. Recipients under age 18, pregnant women and women who have given birth within the last six weeks (regardless of age) and individuals receiving care in long term group care facilities are exempt from copayments. Copayments apply to days of care not services.

These releases incorporated the changes that occurred in the second notice of proposed rulemaking, instituting a policy that had not yet been formally adopted by the Department and, in effect, amending an emergency rule without rulemaking.

These releases on copayments are "rules" within the definition of Section 3.09 of the Illinois Administrative Procedure Act. Each is an agency statement of general applicability that prescribes policy. Section 5(a) of the Illinois Administrative Procedure Act states that prior to the adoption, amendment or repeal of any rule, each agency shall accomplish the actions required by Sections 5.01, 5.02 or 5.03, whichever is applicable. Section 5.01 on general rulemaking is applicable to this proposed rulemaking. Section 5.01 details the notice requirements and procedures which are mandatory prior to the adoption of a proposed rule. Section 5.01(c) of the Act provides that after the expiration of the second 45 day notice period, after notification from the Joint Committee that no

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objection will be issued, or after response by the agency to a statement of objections, whichever is applicable, the agency shall file a certified copy of the rule which shall be published in the Illinois Register. Section 5.01(c) specifically states that any rule adopted under that section is effective upon filing, unless a later date is required by statute or is specified in the rule.

In changing the policy that was originally promulgated in the emergency rulemaking, the Department has failed to comply with the procedural and filing requirements of Section 5.01 of the Illinois Administrative Procedure Act. That this policy change is currently the subject of proposed rulemaking is immaterial. The Department was without statutory authority to prematurely institute the policy change without compliance with the Illinois Administrative Procedure Act.

One of the criteria for the Joint Committee's review of proposed rulemaking is whether it complies with Section 5.01 of the Act. The policy embodied in this proposed rulemaking was adopted without compliance with Section 5.01 of the Act. Therefore, the Joint Committee objects to Section 140.350, "Copayments" of the proposed rules of the Illinois Department of Public Aid, because the Department has failed to comply with the requirements of Section 5.01 of the Illinois Administrative Procedure Act before implementing the policy described in the proposed rulemaking.

Date Agency Response Received: July 6, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: July 15, 1983

Effective Date: July 5, 1983

Rights and Responsibilities -- Child Care and Transportation (89 Ill. Adm. Code 102.84)

Initial Publication in Illinois Register: April 1, 1983

Date Second Notice Received: May 17, 1983

Joint Committee Objection: June 14, 1983

Specific Objection:

Section 5.01(a) of the IAPA requires that the text of the proposed rulemaking contain "the old and new materials of a proposed amendment" and "a complete description of the subjects and issues involved." Section 160.900 of the Secretary of State's Rules on Rules requires that the Department provide a full description of the subjects and

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issues involved in the rulemaking, and that if a proposal is an amendment to a rule, that the full text of the existing rule be provided with language being deleted indicated by strike-outs and language being added underlined.

This rulemaking was proposed on April 1, 1983 as an amendment to Section 102.84. At that time, the Department's policies concerning payment for child care to allow AFDC and AABD recipients to attend appeal hearings were contained in Rule 7.03. There was no Section 102.84. The Department failed to indicate that this rulemaking is an amendment to part of Rule 7.03 in the Summary and Purpose of the Notice and failed to indicate this by printing and then striking-out the rule number in the text of the rule.

Additionally, paragraph (b) is new language. Paragraph (b) provides "The appellant must request the payment no later than 30 days after the hearing." The Department did not indicate that this is new language either by making a statement to that effect in the notice, or by underlining it in the text of the rule, as is required.

The Department explained that when the amendment to Section 102.84 was proposed, Rule 7.03 had been submitted for codification, and the Department thought it would be codified (in pertinent part as Section 102.84) by April 1, 1983, the date when this rulemaking was proposed. Instead Rule 7.03 was not codified until April 15, 1983. Its failure to indicate that paragraph (b) is new language in the notice and text was simply an error.

The failure of the Department to follow the statutory requirements is more than a technical violation. It goes to the very heart of the public notice provisions of the IAPA.

The notice of proposed rulemaking failed to comply with Section 5.01(a) of the Illinois Administrative Procedure Act and Section 160.900 of the Secretary of State's Rules on Rules. Because the source of the rule is not indicated and the additional new language was not marked, it cannot be expected that someone who is not extremely familiar with the Department's rules could find the original rule and discern the changes made to the original rule so that he could submit comment. Therefore, the Joint Committee objects to proposed Section 102.84.

Date Agency Response Received: July 5, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: July 15, 1983

Effective Date: July 1, 1983

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Reimbursement For Hospital Outpatient and Clinic Services (89 Ill. Adm. Code 140.117 and 140.118)

Initial Publication in Illinois Register: April 1, 1983

Date Second Notice Received: May 17, 1983

Joint Committee Objection: June 14, 1983

Specific Objection:

The proposed rulemaking establishes the outpatient and organized clinic services for two groups of recipients. Section 140.117 deals with MAG (Medical Assistance - Grant) and MANG (Medical Assistance - No Grant) recipients. Section 140.118 deals with GA (General Assistance) and AMI (Aid to the Medically Indigent) recipients. Both sections are identical in substance and language.

Subsection (b) of each section concerns the reimbursement for outpatient and organized clinic services¹ provided on or after July 1, 1983. Paragraph (2) of each states in part:

Reimbursement levels shall be at the lower of the hospital's usual and customary charge to the public or the Department's statewide maximum reimbursement screens. Hospitals will be required to bill the Department utilizing those specific service Codes and client coverage policies which apply to the service in question and which are used by non-hospital providers who bill on a fee for services or other basis for such services.

The reimbursement screens to which the Department refers are rates that the Department has set for certain procedures. These screens are calculated from information on the statewide charges for these procedures. The screens are on a computer program at the Department. The position of the Department is that, since the number of individual screens is so great, it is impractical to include the listing of screens in the rules of the Department and have the screens subject to the rulemaking requirements of the Illinois Administrative Procedure Act whenever a change in the screens occurs. The Department further contends that the filing of these screens is unnecessary, because any provider can get information on any screen by simply phoning the Department. The maximum reimbursement screens are generally less than the usual and customary charges to the public.

Section 5(a) of the IAPA requires an agency to complete the appropriate rulemaking procedures prior to the adoption or amendment of any rule. The maximum reimbursement screens would appear to constitute "rules" as defined in Section 3.09

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of the IAPA, because each is an agency statement of general applicability that implements Departmental policy. Because the proposed sections do not include the maximum reimbursement screens, the sections are not being adopted in accordance with Section 5(a) of the IAPA. The Department's procedure of mailing the rates to providers, or supplying the rates by phone rather than adopting them as rules also avoids legislative review, a primary element of the IAPA. Therefore, the Joint Committee objects to proposed Section 140.117(b)(2) and proposed Section 140.118(b)(2) of these rulemaking proposals by the Department of Public Aid.

Date Agency Response Received: July 6, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: July 15, 1983

Effective Date: July 5, 1983

Reimbursement For Hospital Outpatient and Clinic Services (89 Ill. Adm. Code 140.117 and 140.118)

Initial Publication in Illinois Register: April 1, 1983

Date Second Notice Received: May 17, 1983

Joint Committee Objection: June 14, 1983

Specific Objection:

The proposed rulemaking establishes the outpatient and organized clinic services for two groups of recipients. Section 140.117 deals with MAG (Medical Assistance - Grant) and MANG (Medical Assistance - No Grant) recipients. Section 140.118 deals with GA (General Assistance) and AMI (Aid to the Medically Indigent) recipients. Both sections are identical in substance and language.

Paragraph (3) of each subsection (b) deals with certain reimbursements to be made by the Department. This paragraph states in part:

Additional fee codes will be established for procedures which would be expected to be performed only in a hospital setting, and for which no current fee codes exist. The reimbursement level may be set for some or all of these fee codes at the lower of the hospital's actual charges or the Department's average payment for those services in effect March 4, 1983.

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The Department has not yet assembled a complete listing of procedures to which this rule will apply, nor has it calculated the average payment for all procedures to which the rule will apply. The fee codes are the service codes which the hospitals will have to use in billing the Department under paragraph (2) of subsection (b) of each section. As indicated by the rule, these service codes have not been established yet either.

The position of the Department is that the listing of all these items in a rule would be impractical due to the length of the material involved. The Department will send out the listing of surgical procedures to the hospitals, an action which the Department claims will make it unnecessary to put them in the rule. The Department also contends that its policy of supplying information on a particular average payment upon the request of the provider of service eliminates the necessity of filing these rates as rules.

Section 5(a) of the IAPA requires an agency to complete the appropriate rulemaking procedures prior to the adoption or amendment of any rule. The surgical procedures and reimbursement levels fit the definition of a "rule" under Section 3.09 of the IAPA, in that each would be an agency statement of general applicability which prescribes policy. Because the proposed Sections 140.117(b)(3) and 140.118(b)(3) do not include the Department's surgical procedures and reimbursement levels, these sections are not being adopted in compliance with the IAPA. The Department's procedure of mailing the rates to providers, or supplying the rates by phone rather than adopting them as rules also avoids legislative review, a primary element of the IAPA. Therefore, the Joint Committee objects to the proposed Section 140.117(b)(3) and 140.118(b)(3).

Date Agency Response Received: July 6, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: July 15, 1983

Effective Date: July 5, 1983

Reimbursement For Hospital Outpatient and Clinic Services (89 Ill. Adm. Code 140.117 and 140.118)

Initial Publication in Illinois Register: April 1, 1983

Date Second Notice Received: May 17, 1983

Joint Committee Objection: June 14, 1983

Specific Objection:

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Section 140.117(c) and 140.118(c) of the proposed rules of the Department of Public Aid set payment limits for certain renal dialysis services. Each subsection states:

Payment for outpatient renal dialysis services, provided in the outpatient renal dialysis department of the hospital, in a satellite unit or through a home dialysis program, shall be made at the Department's standard all-inclusive rate, not to exceed the Medicare rate.

The Department stated that there is one rate for each level of service (e.g., outpatient) for dialysis, and that these rates are contained in the hospital handbook.

There are federal limits for the outpatient and the satellite units. The Department calculates these rates, which vary from service level to service level, on the basis of the federally imposed limits. The rate paid by the Department would never exceed the Medicare rate.

The Department stated that, while it would be willing to amend the rule to give a more explicit explanation of the calculation of the rates, it saw no need to include the actual dollar figure for the reimbursements. It contends that since the reimbursement figures are contained in the hospital handbook, it is unnecessary to file them as rules.

Section 5(a) of the IAPA requires an agency to complete the appropriate rulemaking procedures prior to the adoption or amendment of any rule. The actual rates which the Department pays for renal dialysis services would appear to be a rule under the definition of Section 3.09 of the IAPA, because each rate is an agency statement of general applicability which prescribes policy. Because the proposed Section 140.117(c) and 140.118(c) do not include the rates paid for dialysis service, these sections are not being adopted in accordance with the IAPA. Therefore, the Joint Committee objects to proposed Sections 140.117(c) and 140.118(c).

Date Agency Response Received: July 6, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: July 15, 1983

Effective Date: July 5, 1983

Medical Assistance Programs - Covered Services (II) (89 Ill. Adm. Code 140.2, 140.3, 140.4, and 140.5)

Initial Publication in Illinois Register: April 1, 1983

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Date Second Notice Received: May 17, 1983

Joint Committee Objection: June 14, 1983

Specific Objection:

Section 5-5 of the Public Aid Code states that "[t]he Illinois Department, by rule, may distinguish and classify the medical services to be provided in accordance with the classes of persons designated in Section 5-2." Section 5-2 designates five distinct eligibility groups, including:

2. Persons otherwise eligible for basic maintenance under Articles III and IV but who fail to qualify thereunder on the basis of need, and who have insufficient income and resources to meet the costs of necessary medical care.

Article III provides for cash assistance to the Aged, Blind, and Disabled (AABD), and Article IV provides for the Aid to Families with Dependent Children (AFDC). Section 5-2(2), then, provides that one class of persons eligible for medical assistance is the group of persons who would qualify for AABD or AFDC but for their income, and who can't afford necessary medical care. These individuals are referred to as the "medically needy" under Federal law; as they receive medical assistance but no cash grant, they are designated in the Department's rules as AABD-MANG and AFDC-MANG recipients.

Section 5-5 authorizes the Department to distinguish services provided to AABD- and AFDC-MANG recipients from those provided to other classes of eligible recipients under Section 5-2. However, the Department has further broken down the AABD- and AFDC-MANG group. Section 140.4 describes services to be covered for AFDC-MANG adults. The services available to this sub-group are considerably less in scope than those provided to the other AFDC- and AABD-MANG recipients in Section 140.3.

When asked to cite its statutory authority to make classifications beyond those listed in Section 5-5, the Department explained that it could establish such a classification on the basis of Section 5-2(3) which provides that medical assistance shall be available to "[p]ersons who would otherwise qualify for Aid to the Medically Indigent under Article VII." The Department stated that this provision authorizes them to establish the classifications of AFDC-MANG adult or any other classifications it deems necessary.

However, Section 5-2(3) creates a distinct classification of medical assistance recipients; it would not operate to

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authorize the Department to create subclassifications of the other eligibility groups.

The Department further argued that, since Section 5-2 provides for medical assistance to any of the classes of persons listed thereunder in respect to whom a plan for coverage has been submitted to and approved by the Governor, it could establish any subclassifications of the groups listed in Section 5-2. It is a well-accepted rule of statutory construction that the inclusion of one excludes others. Thus, Section 5-5 not only allows the Department to distinguish services among the five eligibility classifications of Section 5-2, it also works to prohibit further subclassifications of groups within the eligibility groups of Section 5-2.

Section 140.4 provides a different level of services to the group of AFDC-MANG adults as there is available to other recipients in the same eligibility classification of Section 5-2 and does so in violation of the implicit prohibition of Section 5-5.

Therefore the Joint Committee objects to Section 140.4 "Covered Medical Services Under AFDC-MANG" for recipients who are adults.

Date Agency Response Received: June 20, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: July 15, 1983

Effective Date: July 1, 1983

Medical Assistance Programs - Covered Services (II) (89 Ill. Adm. Code 140.2, 140.3, 140.4, and 140.5)

Initial Publication in Illinois Register: April 1, 1983

Date Second Notice Received: May 17, 1983

Joint Committee Objection: June 14, 1983

Specific Objection:

Section 140.2 lists the medical services covered for recipients of financial assistance under the Department's AABD (Aid to the Aged, Blind and Disabled), AFDC (Aid to Families with Dependent Children), or Refugee/Repatriate programs, recipients of medical assistance only under the AABD program (AABD-MANG), and recipients of medical assistance only under the AFDC program (AFDC-MANG) who are children.

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Section 5.01(a) of the IAPA requires that the text of the proposed rulemaking contain "the old and new materials of a proposed amendment" and "a complete description of the subjects and issues involved." Section 160.900 of the Secretary of State's Rules on Rules requires that if a proposal is an amendment to a rule, that the full text of the existing rule be provided with language being deleted indicated by strike-outs and language being added underlined. The purpose of those requirements is to make it clear to the public what material in any rule is being amended, and to alert the public to all changes in the rules.

Several changes were made in the rule by virtue of the proposed rulemaking, and most were properly pointed by following the underlining/deleting process and explaining the changes in the "Summary and Purpose" of proposed rulemaking. However, one very important change in the coverage --the fact that the service "hospital emergency room visits" is being limited to care for the "alleviation of severe pain or for immediate diagnosis and/or treatment of conditions or injuries which might result in disability or death if there is not immediate treatment" -- was not pointed out either in the "Summary and Purpose" statement, or by appropriate underlining.

The Department stated that the failure to properly underline the appropriate provision and state in the notice that this change was being made was simply error.

The failure of the Department to follow the statutory requirements is more than a technical violation. It goes to the very heart of the public notice provisions of the IAPA.

The notice of proposed rulemaking failed to comply with Section 5.01(a) of the Illinois Administrative Procedure Act and Section 160.900 of the Secretary of State's Rules on Rules. Because the source of the rule is not indicated and the additional new language was not marked, it cannot be expected that someone who is not extremely familiar with the Department's rules could find the original rule and discern the changes made to the original rule so that he could submit comment. Therefore, the Joint Committee objects to proposed Section 140.2.

Date Agency Response Received: June 20, 1983

Nature of Agency Response: Modified, but Failed to Remedy Objection

Publication as Adopted in the Illinois Register: July 15, 1983

Effective Date: July 1, 1983

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Medical Assistance Programs - Covered Services (I) (89 Ill. Adm. Code
140.2, 140.3, 140.4, and 140.5)

Initial Publication in Illinois Register: April 1, 1983

Date Second Notice Received: May 17, 1983

Joint Committee Objection: June 14, 1983

Specific Objection:

Section 5-5 of the Public Aid Code states that "[t]he Illinois Department, by rule, may distinguish and classify the medical services to be provided in accordance with the classes of persons designated in Section 5-2." Section 5-2 designates five distinct eligibility groups, including:

2. Persons otherwise eligible for basic maintenance under Articles III and IV but who fail to qualify thereunder on the basis of need, and who have insufficient income and resources to meet the costs of necessary medical care.

Article III provides for cash assistance to the Aged, Blind, and Disabled (AABD), and Article IV provides for the Aid to Families with Dependent Children (AFDC). Section 5-2(2), then, provides that one class of persons eligible for medical assistance is the group of persons who would qualify for AABD or AFDC but for their income, and who can't afford necessary medical care. These individuals are referred to as the "medically needy" under Federal law; as they receive medical assistance but no cash grant, they are designated in the Department's rules as AABD-MANG and AFDC-MANG recipients.

Section 5-5 authorizes the Department to distinguish services provided to AABD- and AFDC-MANG recipients from those provided to other classes of eligible recipients under Section 5-2. However, the Department has further broken down the AABD- and AFDC-MANG group. Section 140.4 of the proposed rules describes services to be covered for AFDC-MANG adults. The services available to this sub-group are considerably less in scope than those provided to the other AFDC- and AABD-MANG recipients in Section 140.3.

When asked to cite its statutory authority to make classifications beyond those listed in Section 5-5, the Department explained that it could establish such a classification on the basis of Section 5-2(3) which provides that medical assistance shall be available to "[p]ersons who would otherwise qualify for Aid to the Medically Indigent under Article VII." The Department stated that this provision

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authorizes them to establish the classifications of AFDC-MANG adult or any other classifications it deems necessary.

However, Section 5-2(3) creates a distinct classification of medical assistance recipients; it would not operate to authorize the Department to create subclassifications of the other eligibility groups.

The Department further argued that, since Section 5-2 provides for medical assistance to any of the classes of persons listed thereunder in respect to whom a plan for coverage has been submitted to and approved by the Governor, it could establish any subclassifications of the groups listed in Section 5-2. It is a well-accepted rule of statutory construction, however, that the inclusion of one excludes others. Thus, Section 5-5 not only allows the Department to distinguish services among the five eligibility classifications of Section 5-2, it also works to prohibit further subclassifications of groups within the eligibility groups of Section 5-2.

Section 140.4 provides a different level of services to the group of AFDC-MANG adults as there is available to other recipients in the same eligibility classification of Section 5-2 and does so in violation of the implicit prohibition of Section 5-5.

Therefore the Joint Committee objects to Section 140.4 "Covered Medical Services Under AFDC-MANG" for recipients who are adults.

Date Agency Response Received: None

Nature of Agency Response: Failed to Respond

Publication as Adopted in the Illinois Register: Withdrawn, Not Adopted

Effective Date: None

Medical Assistance -- No Grant -- FY '84 Funding For Persons Over 17
(89 Ill. Adm. Code 120.300)

Initial Publication in Illinois Register: April 1, 1983

Date Second Notice Received: May 18, 1983

Joint Committee Objection: June 14, 1983

Specific Objection:

Section 5-5 of the Public Aid Code states that "[t]he Illinois Department, by rule, may distinguish and classify the medical services to be provided in accordance with the classes of

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persons designated in Section 5-2." Section 5-2 designates five distinct eligibility groups, including:

2. Persons otherwise eligible for basic maintenance under Articles III and IV but who fail to qualify thereunder on the basis of need, and who have insufficient income and resources to meet the costs of necessary medical care.

Article III provides for cash assistance to the Aged, Blind, and Disabled (AABD), and Article IV provides for the Aid to Families with Dependent Children (AFDC). Section 5-2(2), then, provides that one class of persons eligible for medical assistance is the group of persons who would qualify for AABD or AFDC but for their income, and who can't afford necessary medical care. These individuals are referred to as the "medically needy" under Federal law; as they receive medical assistance but no cash grant, they are designated in the Department's rules as AABD-MANG and AFDC-MANG recipients.

Section 5-5 authorizes the Department to distinguish services provided to AABD- and AFDC-MANG recipients from those provided to other classes of eligible recipients under Section 5-2. However, the Department has further broken down the AABD- and AFDC-MANG group. Section 120.300 provides that services will not be provided during FY '84 for AFDC-MANG adults who are not pregnant. The services available to this sub-group are considerably less in scope than those provided to the other AFDC- and AABD-MANG recipients.

When asked to cite its statutory authority to make classifications beyond those listed in Section 5-5, the Department explained that it could establish such a classification on the basis of Section 5-2(3) which provides that medical assistance shall be available to "[p]ersons who would otherwise qualify for Aid to the Medically Indigent under Article VII." The Department stated that this provision authorizes them to establish the classifications of AFDC-MANG adult or any other classifications it deems necessary.

However, Section 5-2(3) creates a distinct classification of medical assistance recipients; it would not operate to authorize the Department to create subclassifications of the other eligibility groups.

The Department further argued that, since Section 5-2 provides for medical assistance to any of the classes of persons listed thereunder in respect to whom a plan for coverage has been submitted to and approved by the Governor, it could establish any subclassifications of the groups listed in Section 5-2. It is a well-accepted rule of statutory construction that the inclusion of one excludes

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others. Thus, Section 5-5 not only allows the Department to distinguish services among the five eligibility classifications of Section 5-2, it also works to prohibit further subclassifications of groups within the eligibility groups of Section 5-2.

Section 120.300 provides a different level of services to the group of AFDC-MANG adults as there is available to other recipients in the same eligibility classification of Section 5-2 and does so in violation of the implicit prohibition of Section 5-5.

Therefore the Joint Committee objects to Section 120.300 "Funding for Persons Over 17 During Fiscal Year 1984."

Date Agency Response Received: None

Nature of Agency Response: Failed to Respond

Publication as Adopted in the Illinois Register: Withdrawn, Not Adopted

Effective Date: None

Medical Assistance - No Grant - Age (89 Ill. Adm. Code 120.302)

Initial Publication in Illinois Register: April 1, 1983

Date Second Notice Received: May 17, 1983

Joint Committee Objection: June 14, 1983

Specific Objection:

The Aid to Families with Dependent Children - Medical Assistance - No Grant program provides medical assistance to persons who would otherwise qualify for AFDC cash grants but do not qualify on the basis of need.

The Department is amending Section 120.312 to state that, to be considered a child under the AFDC-MANG program, a person must be under the age of 18 or 18 and a full time high school student (or equivalent level) who will finish school before reaching age 19. Presently, the rule states that, to be considered a child under the AFDC-MANG program, the individual must be under the age of 21. The effect of this amendment is that 19 and 20 year olds who are otherwise eligible for medical assistance as dependent children will no longer be eligible to receive medical assistance unless they qualify under eligibility requirements for AFDC-MANG adult recipients as stated in Section 120.390. Such recipients must either be the "caretaker relative" of the assistance unit, the spouse of caretaker relative under the restrictions stated in

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the Section 120.390, or another essential relative whose presence is necessary for the care of an eligible child.

The Department stated that this change was being made in response to the enactment of Section 2172 of Public Law 97-35, "The Omnibus Budget Reconciliation Act," effective August 13, 1981. Section 2172 amended the Social Security Act to state that medical assistance shall be provided to persons who are "under the age of 21, or, at the option of the State, under the age of 20, 19, or 18 as the State may choose." (emphasis added)

Section 5-2 of the Public Aid Code states that medical assistance shall be available to persons otherwise eligible under Article IV, "Aid to Families with Dependent Children," but who fail to qualify on the basis of the financial requirements. Article IV, Section 4-1.1 states that, to be included as a child under the AFDC program, a person must be under the age of 18, or 18 or over but under 21 if in full-time school attendance. The State has not amended Article IV in response to the option extended under Federal law to adopt a more restrictive child age eligibility requirement for medical assistance.

House Bill 207, designed to revise the Public Aid Code, proposes to amend the section of the Code concerning child age eligibility requirements to adopt the federal definition of a dependent child.

However, because House Bill 207 has not become law and because the Federal authority on which the Department relies is permissive rather than mandatory, the Joint Committee objects to this rulemaking on the grounds that it imposes more restrictive age eligibility requirements for the AFDC-MANC program than are authorized by Sections 5-5 and 4-1.1 of the Illinois Public Aid Code.

Date Agency Response Received: July 5, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: July 15, 1983

Effective Date: July 5, 1983

Budgeting (AABD) (89 Ill. Adm. Code 113.101 - 104, 110, 114 - 118, 304 and 305)

Initial Publication in Illinois Register: April 8, 1983

Date Second Notice Received: June 1, 1983

Joint Committee Objection: July 12, 1983

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Specific Objection:

The function of the Joint Committee, as stated in Section 7.04(1) of the Illinois Administrative Procedure Act, is "the promotion of adequate and proper rules by agencies, and an understanding on the part of the public respecting such rules." For the purpose of carrying out that function, the Joint Committee's Operational Rules provide that one of the criteria for reviewing proposed rules is whether "the language of the rules [is] simple and clear, so that the rules can be understood by the persons and groups they will affect."

The rules proposed in this rulemaking affect the recipients of benefits under the Aid to the Aged, Blind and Disabled program, and are for the purpose of explaining what income of a recipient is to be considered in determining the amount (if any) that the recipient will receive. Unfortunately, much of the proposed rulemaking is so confusing that it is highly unlikely that most of the prospective recipients will understand the rule.

Proposed Section 113.303 provides:

- a) All AABD recipients shall have income budgeted on a retrospective basis.
- b) Eligibility for AABD is first determined on a prospective basis for all eligibility factors. If eligible on this prospective basis, the actual amount of benefits the unit is entitled to receive shall be determined by budgeting income retrospectively. At intake, however, income shall be budgeted prospectively for two months before beginning retrospective budgeting in the third month.
- c) The budget month is the calendar month from which the Department uses income to determine the amount of assistance the unit is entitled to receive. The payment month is the calendar month which the assistance grant covers. The payment month is the second calendar month following the budget month.

Proposed Section 113.102 provides:

- a) The unearned income received or expected to be received during a thirty day period commencing with the day of application shall be considered in the determination of eligibility.

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- b) If the client is eligible, the amount of his initial prorated entitlement period (IPE) grant shall be based on the income which the client expects to receive during the IPE period.
- c) If the IPE period is less than 60 days, the amount of the first grant shall be based on the income which the client expects to receive during the first payment month following the IPE period.
- d) If the IPE period is 60 days or more, the amount of the first regular grant shall be based on the income which the client receives or expects to receive during the corresponding budget month.
- e) For the months following the IPE and first regular grant, the amount of the grant shall be based on the amount of income received during the corresponding budget month.

Proposed Section 113.304 provides:

- a) The budget month and payment month are determined on a calendar basis for all AABD cases. The payment month is the calendar month in which the assistance unit receives the assistance grant. The budget month is the second calendar month preceding the payment month.

Proposed Section 113.114 provides:

- a) The earned income received or expected to be received during a thirty day period commencing with the day of application shall be considered in the determination of eligibility.
- b) If the client is eligible, the amount of his initial prorated entitlement period (IPE) grant shall be based on the income which the client expects to receive during the IPE period.
- c) If the IPE period is less than 60 days, the amount of the first grant shall be based on the income which the client

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expects to receive during the first payment month following the IPE period.

- d) If the IPE period is 60 days or more, the amount of the first regular grant shall be based on the income which the client receives or expects to receive during the corresponding budget month.
- e) For the months following the IPE and first regular grant, the amount of the grant shall be based on the amount of income received during the corresponding budget month.

While some concepts are complex and incapable of simple explanation, it appears that the Department could draft the above rules in a manner, and using terminology, which would be much easier to understand by the people for whom the rules are written.

Accordingly, the Joint Committee objects to Sections 113.102, 113.114, 113.303, and 113.304 because the rules are not simple and clear, so that the rules can be understood by the persons and groups they will affect.

Date Agency Response Received: July 21, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: August 5, 1983

Effective Date: August 1, 1983

Budgeting (AABD) (89 Ill. Adm. Code 113.101 - 104, 110, 114 - 118, 304 and 305)

Initial Publication in Illinois Register: April 8, 1983

Date Second Notice Received: June 1, 1983

Joint Committee Objection: July 12, 1983

Specific Objection:

Section 113.104 states, "If a recipient reports and verifies that unearned income has ended income received during all budget months will be used to determine the grant in all corresponding payment months." (emphasis added)

Section 113.118 states "If a recipient reports and verifies that employment has ended, income received during all budget

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months will be used to determine the grant in all corresponding payment months." (emphasis added)

When asked to clarify the meaning of these sections, the Department explained that verification of termination of employment or unearned income could be established by a written notice or statement from the employer indicating employment has ended, or a notice from Social Security or a pension plan that income has terminated. The Department was then asked if it would clarify what would constitute verification in the rule. The Department stated that it would not because it felt it was not necessary to clarify, in the rule, how verification will be made.

The method required to be used by recipients to "verify" that unearned income or employment has terminated is a policy of the Department, which is properly included in the rules so that those affected can fully understand the obligation imposed on them. Since the Department has refused to include this policy, the Joint Committee objects.

Date Agency Response Received: July 21, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: August 5, 1983

Effective Date: August 1, 1983

Medical Payment (89 Ill. Adm. Code 140.3, 140.4, 140.5, 140.380,
140.680, and 140.830)
[Emergency]

Initial Publication in Illinois Register: July 15, 1983

Joint Committee Objection: August 18, 1983

Specific Objection:

Individuals who would otherwise be eligible for an Aid to Families with Dependent Children (AFDC) grant but who fail to meet the financial eligibility requirements are eligible for medical assistance under Article V of the Public Aid Code if they do not have sufficient income and resources to meet the costs of their medically necessary care. These individuals are among those referred to in Federal law as the "medically needy" and are serviced under the Department's Aid to Families with Dependent Children - Medical Assistance - No Grant (AFDC - MANG) program. Federal statute requires that if the State provides medical assistance to the medically needy, the State plan must provide medical assistance to "any group or groups of individuals . . . described in 42 USCA 1396d(a)(i)." (42 USCA 1396(a)(10)(ii)) These groups are

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referred to as "medically needy groups." Of these groups, there are three medically needy groups into which AFDC - MANG recipients may be classified: individuals under the age of 21 (or, at State option, 20, 19 or 18), caretaker relatives and pregnant women. Federal regulation 42 CFR 440.240 requires that the services available to the individuals of a medically needy group be equal in amount, duration and scope.

Formerly, Section 140.3 listed the services available to "AFDC-MANG children" and Section 140.4 listed the services available to "AFDC-MANG adults." With this rulemaking, Section 140.3 now applies to AFDC-MANG recipients who are under the age of 18 or recipients of any age who are pregnant and Section 140.4 applies to non-pregnant AFDC-MANG recipients over the age of 17. Under the Department's program, 18 year olds who are full-time high school seniors may qualify for AFDC-MANG as dependent children. These 18 year olds used to receive the services listed in Section 140.3 as dependent children, but now receive the lesser amount of services listed in Section 140.4 as recipients over the age of 17. Because these 18 year olds are dependent children and are not either pregnant or caretaker relatives, they must belong to the medically needy group "under the age of 21 (or, at State option, 20, 19 or 18)." Clearly, it is a violation of Section 440.240 of the Federal regulations for the Department to be making available services of a lesser scope to 18 year old dependent children than are available to the other members of the medically needy group to which they belong.

The Department cited paragraph (b) of 42 CFR 435.308 as its authority for offering a differing set of services to 18 year old dependent children than to others in the medically needy group. This paragraph states that the Department may cover all eligible individuals under the age of 21 (or, at State option, 20, 19, or 18) or "reasonable classifications" of that group. The Department stated that it covers all eligible recipients who are under age 18 and certain 18 year olds and that it is making what it considers a "reasonable classification," one based on age, by isolating the 18 year olds from those under age 18 and offering them a different set of services.

However, paragraph (b) deals with the question of who is covered - not with the scope of services available to covered individuals. It does not give the agency the authority to subclassify this medically needy group for the purpose of providing varying coverage. The Department has chosen to make eligible for Medicaid all individuals under age 18 and certain 18 year olds, and according to the Federal regulation concerning the comparability of the services offered to members of a medically needy group (42 CFR 440.240) the same extent of services are to be offered to all individuals in the medically needy group.

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The Department's interpretation of paragraph (b) also appears inappropriate because, even if this paragraph did allow the Department to make "reasonable classifications" within the category of "individuals under age 21 (or, at State option, 20, 19, or 18)" and offer different levels of services to the various groups, a classification based on age is not consistent with the type of reasonable classification contemplated by this paragraph. This medically needy group is defined on the basis of age. If the Department could subclassify this category on the basis of age, the definition of the category would be meaningless. Furthermore, examples of "reasonable classifications" are provided following paragraph (b): they are individuals in public and private foster homes or institutions, individuals in adoptions subsidized in full or in part by a public agency, individuals in intermediate care facilities and intermediate care facilities for the mentally retarded, and individuals receiving active treatment as inpatients in a psychiatric facility. These examples work to define the term "reasonable classifications"; a classification based on age seems inconsistent with the intended types of classifications.

Therefore, the Joint Committee objects to Sections 140.3 and 140.4 of the Department of Public Aid's rules because they provide a different level of services to AFDC - MANG recipients under the age of 18 than to 18 year old AFDC - MANG recipients who are dependent children in violation of 42 CFR 440.240.

Date Agency Response Received: September 29, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Effective Date: July 5, 1983

Medical Payments - Point Count Guidelines

Initial Publication in Illinois Register: May 13, 1983

Date Second Notice Received: August 1, 1983

Joint Committee Objection: September 22, 1983

Specific Objection:

Section 5-5.6a of the Public Aid Code (Ill. Rev. Stat. 1981, ch. 23, par. 5-5.6a) states that the cost elements of payments to nursing facilities which were promulgated and effective on June 30, 1981 "shall be null and void on July 1, 1982." New elements were to have been promulgated on July 1, 1982. One of these cost elements, patient services, includes nursing services, and its cost is to be determined by taking into account the actual costs incurred by the facility based on the

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rate of utilization of the services as derived from an assessment of patient needs. (Id., ¶5-1.1(d), 5-5.5(a)(2))

On June 30, 1981 the Department had in effect a "point count" system for determining reimbursement for nursing services. This system assessed patients' needs by allocating points to the individual patient according to whether or how well he/she can perform specified tasks. This system was used for reimbursing all of the types of skilled and intermediate care facilities, which include Skilled Nursing Facilities (SNF) and Intermediate Care Facilities (ICF) for geriatric patients, Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and Skilled Nursing Facilities for Pediatrics (SNF/PED).

On April 30, 1982, the Department adopted a new nursing services assessment system for SNF's and ICF's for geriatric patients (6, Ill. Reg. 5947, effective April 30, 1982). It is called the "patient assessment" system. However, the point count system is still being used for ICF/MR's and SNF/PED's, and the rules for this system are being amended in this rulemaking. The Department was questioned as to why it had not replaced the point count system for ICF/MR's and SNF/PED's as apparently required by Section 5-5.6a.

The Department stated that the amendment to Section 5-5.6a of the Code, which made the systems used prior to June 30, 1981 void, was only intended to make void the use of the point count system for ICF and SNF facilities for geriatric and not the use of this system for ICF/MR and SNF/PED facilities. The Department explained that there were many problems with the point count system for geriatric patients, including problems with a multiple regression provision and linking the system to facility staffing needs. At the same time the amendment to the Code was passed, a point count tool for SNF/PED's and ICF/MR's was being worked out. The Department stated that the point count tool for geriatric facilities was greatly criticized, but the tool for use in reimbursing SNF/PED's and ICF/MR's was not.

The Department's argument notwithstanding, SNF/PED's and ICF/MR's are simply specialized skilled nursing and intermediate care facilities respectively. There is absolutely no statutory indication that the operation of Section 5-5.6a was to extend only to certain types of nursing facilities. In fact Section 5-5.6a voided all conditions of payment for skilled nursing and intermediate care services and all standards and cost elements of payment to nursing facilities. The legislative intent seems to have been for the Department to simply start over with respect to its reimbursement methodology for all nursing facilities. Therefore, the Joint Committee objects to these amendments to a system that was void on July 1, 1982 under Section 5-5.6a of the Public Aid Code.

Date Agency Response Received: December 27, 1983

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Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

Medical Payments - Point Count Guidelines

Initial Publication in Illinois Register: May 13, 1983

Date Second Notice Received: August 1, 1983

Joint Committee Objection: September 22, 1983

Specific Objection:

The Department uses a "point count" system for determining the amount of the reimbursement that a Skilled Nursing Facility for Pediatrics (SNF/PED) or Intermediate Care Facility for the Mentally Retarded (ICF/MR) will receive for services provided to eligible clients. The point count system assesses a patient's needs by allocating points to the individuals according to whether or how well he/she can perform specified tasks.

Section 140.860(h) provides that, if a facility's actual staffing level is below what is "indicated in the point counts," the Department may refer the facility to the Department of Public Health for a determination as to the necessity of an inspection to determine the quality of care, or may itself conduct an inspection and point count determination of residents. If the findings of such actions indicate that minimally adequate care is being provided but that facility staffing was at least 10 percent below the staffing levels necessary to provide the services reflected in the point count, the Department may, under Section 140.860(i) reduce the reimbursement rate and recover amounts paid previously.

Section 4.02 of the Illinois Administrative Procedure Act states that "[e]ach rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power." When asked to explain in its rules how the Department converts the average point count into the number of staffing hours needed, the Department offered only to include the following language in Section 140.860(h):

the points are derived from a formula that multiplies the level of staff (1.0 for a nurse's aid, 1.1 for a trained aid, 1.5 for a licensed practical nurse and 1.9 for a registered nurse), times the number of staff needed to perform the procedure, times the frequency the procedure is conducted in a

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30 day month, times the number of minutes each procedure takes, times the staff to patient ratio.

However, this does not appear to be an adequate explanation of the standards used by the Department to determine whether or not there is adequate staffing to perform the tasks as indicated by the point counts. The offered language still does not explain the Department's determination of the number of staff needed, the number of minutes required for each procedure or the staff to patient ratio, nor does it explain how the points are ultimately "derived" from the formula. Such information is clearly a necessary part of the standards used by the Department to determine what staffing level is necessary.

Because the Department has not provided adequate standards for determining the number of staff hours needed to perform the services represented by the SNF/PED and ICF/MR's average point count in violation of Section 4.02 of the IAPA, the Joint Committee objects to Section 140.860(h) of the Department of Public Aid's rules.

Date Agency Response Received: December 27, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

Medical Payments - Point Count Guidelines

Initial Publication in Illinois Register: May 13, 1983

Date Second Notice Received: August 1, 1983

Joint Committee Objection: September 22, 1983

Specific Objection:

The Department of Public Aid, in determining the amount of reimbursement to pay to Skilled Nursing Facilities for Pediatrics (SNF/PED) and Intermediate Care Facilities (ICF/MR) conducts an analysis of whether or not the facility's staffing is adequate to provide the services to eligible recipients for which the facilities are seeking reimbursement. Section 140.860(h) provides that, if a facility's staffing level is below that needed to provide the services for which the facility is seeking reimbursement, the Department may refer the facility to the Department of Public Health, which will determine if adequate care is being given, conduct a facility investigation to determine the source and magnitude of the

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discrepancy, and/or target the facility for a possible audit and investigation by the Department.

As Section 4.02 of the Illinois Administrative Procedure Act requires each rule which implements a discretionary power to be exercised by an agency to include the standards by which the agency shall exercise the power, the Department was asked to explain when it would take which action and to include standards.

The Department explained that it always refers the facility to the Department of Public Health. It also might conduct an investigation, target the facility for a possible audit by the Department or do nothing. The Department would not provide the criteria it uses in determining which of these actions it will take, stating that it was not obligated to provide such standards. The Department stated that it believes that it is only required to include in its rules the actions it might take, and it is not required to commit itself to when it will take which action.

Clearly, the choice of whether or not to investigate a facility and the choice of methods to be used is a discretionary power which the agency is exercising. As such, the Department is required by Section 4.02 to include the criteria used in determining which action it will take.

Section 140.680(i) explains that if a facility, through one of the methods described above, is found to have minimally adequate care but the staffing was "at least 10 percent below the staffing level needed, the Department "may" reduce the facility's rate of payment and recover amounts paid previously. When asked for clarification concerning when the Department will reduce the rate and recover payments, the Department stated that it would explain when it takes these actions by stating in the rules that if the "facility staffing level was at least two standard deviations below the staffing level necessary to provide the services" as determined by the Department, the rate will be reduced and the Department will recover amounts previously paid, and the Department "may also reduce the rate if the discrepancy is less than two standards deviations." This explanation clearly does not provide the needed standards, because the Department provided a standard and then stated that it will make exceptions to the standard without explaining when those exceptions will be made.

The Joint Committee objects to Section 140.680(h) and 140.680(i) because the Department has not provided the criteria it uses in determining what action it will take in investigating a facility whose staffing is below that which the Department determines is needed in light of the service being provided and the criteria used to determine whether or not the Department will reduce the payment rate and recover amounts previously paid to facilities with inadequate staffing, as is

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required by Section 4.02 of the Illinois Administrative Procedure Act.

Date Agency Response Received: December 27, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

Medical Payments - Point Count Guidelines

Initial Publication in Illinois Register: May 13, 1983

Date Second Notice Received: August 1, 1983

Joint Committee Objection: September 22, 1983

Specific Objection:

Section 140.860(h) states in part:

The Department intends to compare the staffing data to the amount of nursing time required, based on the point counts, to meet the services provided to the residents. If the staffing reports show a discrepancy between actual statewide staffing and the staffing in the point counts, reimbursement may be correspondingly changed to accurately reflect available staffing.

The Department was asked to explain how it would determine actual statewide staffing and how it would determine whether and how much to change reimbursement.

Paragraph (g) of the same section requires that Skilled Nursing Facilities for Pediatrics (SNF/PED) and Intermediate Care Facilities for the Mentally Retarded (ICF/MR) submit staffing reports to the Department. The Department explained that the aggregate staffing data contained in the staffing reports of the facilities throughout the State are compared to the staffing which the Department determines is necessary to provide the services provided to Medicaid recipients. The Department makes this determination using a formula which is based on the numerical "point counts" which are assigned to the services being provided. The formula translates the point count values and additional data into the staffing hours needed. The determination of the reimbursement rate of a facility is based on the point counts of the services provided to an individual and the costs of the facility.

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The Department further explained that the language in question means that, if the Department's method of determining the staffing needed, as reflected in the point counts, differs from actual staffing throughout the State, it may adjust its reimbursement policies for facilities which have staffing levels below those indicated as being needed through the Department's point count formula. The Department stated that it is including this provision because its formula for determining the staffing level indicated by the point count may not be accurate.

The function of the Joint Committee, as stated in Section 7.04(1) of the Illinois Administrative Procedure Act, is "the promotion of adequate and proper rules by agencies, and an understanding on the part of the public respecting the rules." For the purpose of carrying out that function, Section 220.900(b)(3) of the Joint Committee's Operational Rules provides that one of the criteria for reviewing proposed rules is whether "the language of the rules [is] simple and clear, so that the rules can be understood by persons and groups they will affect." It is readily apparent that the first two sentences of paragraph (h) do not simply and clearly state the Department's policy. In fact, one cannot tell whether the change in reimbursement refers to a change in a given facility's reimbursement or the level of reimbursement statewide.

Furthermore, Section 4.02 of the Illinois Administrative Procedure Act requires that "[e]ach rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power." The Department has not explained how it will decide whether to change the reimbursement or how much it will change the reimbursement if its formula is inaccurate. Clearly this lack of standards by which the Department exercises discretion in this case is a violation of Section 4.02 of the Illinois Administrative Procedure Act.

The Joint Committee objects to Section 140.860(h) because this provision is unclear and the Department has not provided the standards it uses in making the decision of whether or not to adjust the reimbursement rate of SNF/PED and ICF/MR facilities.

Date Agency Response Received: December 27, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

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Medical Payments - Point Count Guidelines

Initial Publication in Illinois Register: May 13, 1983

Date Second Notice Received: August 1, 1983

Joint Committee Objection: September 22, 1983

Specific Objection:

This proposed rulemaking contains the rules for the "point count" system through which Skilled Nursing Facilities for Pediatrics (SNF/PED) and Intermediate Care Facilities for the Developmentally Disabled (ICF/MR) are reimbursed for services provided to Medicaid recipients. Point counts consist of a certain number of points assigned to a particular service which is rendered to a patient. The facilities' median point count is then converted into a reimbursement rate.

Initially, the Department did not provide the standards it uses for converting the median point count into the reimbursement rate. Pursuant to the request from staff that this formula be provided, the Department submitted the following:

Section 140.855 Statewide Rates

- a) The nursing rate for ICF/MR, SLC and SNF/PED facilities is determined by adding the statewide median base rate to the value per point multiplied by the individual facility's number of points.
- b) The median base rate is determined by arraying the base costs of each facility. These base costs are those non hands-on care costs, i.e., medical director, director of nursing, and consultant costs for developmental and advisory functions. The median base cost is updated for inflation and becomes the median base rate.
- c) The value per point is determined by arraying each facility's allowable [sic] costs excluding the base costs described in b) above and dividing by the statewide median number of points. The result is the value per point.

The Department does not explain its use of the term "arraying," how the median base cost is updated for inflation, or what is done following the arraying of the facilities' allowable costs to arrive at a figure which can

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be divided by the statewide median number of points. Overall, this proposed section is not an adequate expression of the standards used by the Department to determine the rate at which SNF/PED and ICF/MR facilities are to be reimbursed. The Joint Committee objects to Section 140.855 because the standards have not been provided.

Date Agency Response Received: December 27, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

Medical Payments - Point Count Guidelines

Initial Publication in Illinois Register: May 13, 1983

Date Second Notice Received: August 1, 1983

Joint Committee Objection: September 22, 1983

Specific Objection:

The Department has proposed this rule to amend the procedure used to determine the reimbursement of Skilled Nursing Facilities for Pediatrics (SNF/PED) and Intermediate Care Facilities for the Mentally Retarded (ICF/MR) for services provided to Medicaid recipients.

The Department states in this rulemaking that "[b]eginning July 1, 1983, reimbursement for services provided during a six month period or cycle to SNF/PED or ICF/MR level of care Medicaid recipients occupying a SNF/PED licensed or ICF/MR licensed and certified bed will be based on the average point count of Medicaid residents occupying similarly licensed and certified beds in the facility."

Currently, an eligible recipient's point count(s) during a one month period determines the rate paid to the facility for nursing services rendered to the recipient during that time period. With this rulemaking, a facility's average reimbursement rate is calculated, and that rate is effective for a six month period. As indicated above, the Department began using the new method for determining the rate of reimbursement for facilities and the practice of using this rate for a six month period beginning July 1, 1983, prior to the adoption of this rulemaking.

Section 4(c) of the Illinois Administrative Procedure Act, Ill. Rev. Stat. 1981, ch. 127, par. 1004(c), states in part:

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No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act. (emphasis added)

Also, Section 5.01 of the Act sets out the procedures for general rulemaking, and it is applicable to this proposed rulemaking. Paragraph (c) of Section 5.01 states in part:

Each rule hereafter adopted under this Section is effective upon filing, unless a later date is required by statute or is specified in the rule.

This section clearly provides that adopted rules are to be effective no sooner than the date of their filing. The statute says nothing concerning the retroactive effectiveness of a rule, which would be the result of this proposed rulemaking.

The Joint Committee objects to Section 140.860 of the Department of Public Aid's rules because the Department has begun using the reimbursement procedure contained in this rulemaking prior to the adoption of these rules in violation of Section 4(c) and Section 5.01(c) of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, pars. 1004(c) and 1005.01(c)).

Date Agency Response Received: December 27, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

Food Stamps; Food Stamp Simplified Application Demonstration Project (89 Ill. Adm. Code 121.98)

Initial Publication in Illinois Register: July 1, 1983

Date Second Notice Received: August 23, 1983

Joint Committee Objection: September 22, 1983

Specific Objection:

Section 121.98(a) provides that "Those Food Stamp households affected will be all Food Stamp Households all of whose members received Aid to Families with Dependent Children (AFDC) benefits (Project Households.)" (emphasis added). Upon questioning by staff, however, it appeared that it is

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not, in fact, necessary for all members of the household to be receiving AFDC benefits to be a project household. In addition to those receiving AFDC benefits, a project household apparently may include individuals who are receiving Supplemental Security Income (SSI) and/or State Supplemental Payments (SSP) for blindness or disability. These individuals are termed "qualifying members" and are not eligible for both SSI/SSP benefits and AFDC benefits.

When it was pointed out to the Department that the language of Section 121.98(a) seemed to exclude households any of whose members were defined as a "qualifying member," the Department representative indicated that that language is indeed accurate, and that whether or not a qualifying member is present in the household affects only the amount available to the household. However, it remains unclear how the household can have only AFDC recipients and yet have a "qualifying member." The Department was unable to refer to any section of the rules which clarified, and refused to otherwise clarify the confusion.

The Joint Committee objects because the rule fails to clearly and simply state agency policy.

Date Agency Response Received: October 6, 1983

Nature of Agency Response: Modified to Meet the Objection

Publication as Adopted in the Illinois Register: October 14, 1983

Effective Date: October 4, 1983

Food Stamps; Food Stamp Simplified Application Demonstration Project (89 Ill. Adm. Code 121.98)

Initial Publication in Illinois Register: July 1, 1983

Date Second Notice Received: August 23, 1983

Joint Committee Objection: September 22, 1983

Specific Objection:

Section 121.98(d) contains the standard allotment amounts for Food Stamps for pure AFDC Households. The allotment amounts are based on a number of factors set out in Section 112.252-254.

The Department submitted a set of figures for the standard allotment amounts in the first notice as Section 121.98(d). The first notice stated that these allotment amounts were not complete and were not final. They would be determined in accordance with a methodology determined by the Department

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and approved by the U.S. Department of Agriculture but which had not yet been finalized. However, the Department submitted a different set of figures for the standard allotment amounts with the second notice but stated that they were not to be considered part of the second notice text of the rule and refused to include the figures in the rule. The Department stated that the standard allotment amounts in both the first and second notice have been sent to the U.S. Department of Agriculture and neither have been approved.

The Department was asked if the figures provided with the second notice would be the figures in the adopted rule. The Department stated that the figures in the adopted rule would probably be different than those with the second notice since the U.S. Department of Agriculture had not yet approved the figures for the allotment amounts. The Department further stated that if and when the USDA grants approval of the program, the Department would then correct the figures for the allotment amounts in the adopted rule.

However, Section 5.01(b) of the Illinois Administrative Procedure Act states in part that "After the commencement of the second notice period, no substantive changes may be made to a proposed rulemaking unless it is made in response to an objection or suggestion of the Joint Committee."

It appears the Department has every intention of violating Section 5.01(b) of the IAPA by adjusting the figures in the adopted version of the rule.

The Joint Committee objects to Section 121.98(d) of the Department's rules because the figures included in the second notice for the standard allotment amounts are not the figures which the Department will use in the adopted rule.

Date Agency Response Received: October 6, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: October 14, 1983

Effective Date: October 4, 1983

Budgeting Unearned Income (AFDC) (89 Ill. Adm. Code 112.105 - 108)

Initial Publication in Illinois Register: April 8, 1983

Date Second Notice Received: August 5, 1983

Joint Committee Objection: September 22, 1983

Specific Objection:

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The Joint Committee objects to proposed Section 112.106 because the rule is not stated simply and clearly. The function of the Joint Committee, as stated in Section 7.04(1) of the Illinois Administrative Procedure Act, is "the promotion of adequate and proper rules by agencies, and an understanding on the part of the public respecting the rules." For the purpose of carrying out that function, Section 220.900(b)(3) of the Joint Committee's Operational Rules provides that one of the criteria for reviewing proposed rules is whether "the language of the rules [is] simple and clear, so that the rules can be understood by persons and groups they will affect."

Section 112.106 affects the recipients of benefits under the Aid to Families with Dependent Children (AFDC) program, and is for the purpose of explaining the budgeting of unearned income of applicants receiving income on the date of application and/or date of decision. Unfortunately, much of the proposed rulemaking is so confusing that it is highly unlikely that most of the prospective recipients will understand the rule.

Proposed Section 112.106 provides:

- a) The unearned income received or expected to be received during a thirty day period commencing with the day of application shall be considered in the determination of eligibility.
- b) If the client is eligible, the amount of his initial prorated entitlement period (IPE) grant shall be based on the income which the client expects to receive during the IPE period. The IPE period is the period of time from when assistance first begins to the time the recipient receives the first regular grant.
- c) If the IPE period is less than 60 days, the amount of the first regular grant shall be based on the income which the client expects to receive during the first payment month following the IPE period.
- d) If the IPE period is 60 days or more, the amount of the first regular grant shall be based on the income which the client receives or expects to receive during the corresponding budget month.
- e) For the months following the IPE and first regular grant, the amount of the

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grant shall be based on the amount of
income received during the
corresponding budget month.

The Department was asked to explain how the initial prorated entitlement (IPE) period grant related to the first payment month, first regular grant month, and budget month. The Department replied that these relationships were already adequately explained in the rule and that further explanation was not needed. The Department was then asked to explain the relationship in simpler terminology in order to be more easily understood. The Department stated that the rule explained the relationships in the simplest manner possible. The Department further stated that it would take a major rewrite of the rule to make it any simpler and that it is not willing to do so at this time.

Due to the variance in length of the IPE period, the Department feels that the rule could not be expressed in simpler terms. However, it appears that the Department could draft the above rule in such a manner and using terminology which would be much easier to understand by the people for whom the rules are written.

Therefore the Joint Committee objects to Section 112.106 because the rule is not simple and clear, so that the rules can be understood by the persons and groups they will affect.

Date Agency Response Received: October 12, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: October 21, 1983

Effective Date: October 7, 1983

Budgeting Unearned Income (AFDC) (89 Ill. Adm. Code 112.105 - 108)

Initial Publication in Illinois Register: April 8, 1983

Date Second Notice Received: August 5, 1983

Joint Committee Objection: September 22, 1983

Specific Objection:

Section 112.108 states, "If a recipient reports and verifies that unearned income has ended income received during all budget months will be used to determine the grant in all corresponding payment months."

When asked how a recipient could verify that income has ended, the Department explained that verification of

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termination of unearned income could be established by a written notice or statement from Social Security or a pension plan, as an example, that income has ended. In addition, the Department stated that a telephone conversation with an employer or the employer's refusal to talk with the Department could be considered as verification. The Department was then asked if it would include in the rule examples of sources that would be acceptable for verification. The Department refused to include examples in the rule, because the examples have a tendency to become an exclusive list of what will be accepted.

The method required by recipients to "verify" that unearned income has terminated is a policy of the Department, which should be properly included in the rules so that those affected can fully understand the obligation imposed on them. Since the Department has refused to include this policy, the Joint Committee objects.

Date Agency Response Received: October 12, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: October 21, 1983

Effective Date: October 7, 1983

Illinois Work Experience Program - Section 112.76; Illinois Work Experience Program Research Project - Section 112.77 (89 Ill. Adm. Code 112.76 and 112.77)

Initial Publication in Illinois Register: July 8, 1983

Date Second Notice Received: September 7, 1983

Joint Committee Objection: October 26, 1983

Specific Objection:

The State of Illinois' Aid to Families with Dependent Children (AFDC) program, which is administered by the Department of Public Aid under the Illinois Public Aid Code, provides assistance in the form of cash grants, medical services, and social services to eligible families with one or more dependent children (Ill. Rev. Stat. 1981, ch. 23). The Federal government provides federal financial participation (FFP) for the program and provides the standards of eligibility for the program, except that participating states may set their own standards of need and level of benefit.

Federal statute and regulations concerning eligibility for the AFDC program includes requirements concerning participation in various work programs, which the states may operate as a condition for eligibility. The Federal law states that "[a]ny

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State which chooses to do so may establish a community work experience program in accordance with this section. The purpose of the community work experience program is to provide experience and training from individuals not otherwise able to obtain employment, in order to assist them to move into regular employment." (42 U.S.C.A. 609(a)(1) (Supp. 1982)) The corresponding Federal regulations contain administration and federal financial participation regulations and specify the sanctions which may be applied if AFDC recipients fail to participate in the program. (42 C.F.R. 238)

The Department's "Illinois Work Experience Program" has the same purpose as the program contained in the Federal statute. The Department's rules for IWEP are nearly identical in content and structure to the Federal regulations concerning community work experience programs. However, the Department of Public Aid's requirements are inconsistent with the Federal regulations with regard to the reimbursement of participants for necessary expenses and the Federal requirement that participants not be assigned to projects which require that they travel unreasonable distances from homes or remain away from their homes overnight without their consent.

The Department readily admits that its program is not in compliance with Federal requirements. The Department stated, however, that it is not implementing the "optional federal program" but rather, it is implementing its own program under Section 9-6 of the Public Aid Code. (Ill. Rev. Stat. 1981, ch. 23, par. 9-6) This section authorizes the Department to "initiate, promote and develop job search, training and work programs which will provide employment for and contribute to the training and experience of persons receiving aid under," among others, the Aid to Families with Dependent Children program. Further, the Department cites Section 4-1.10 of the Code as its authority to determine the sanctions to be applied to persons not accepting assignment to programs implemented under Section 9-6. (Ill. Rev. Stat. 1981, ch. 23)

Section 4-1.10 states that "this section is only operative to the extent that it does not conflict with the Federal Social Security Act, or any other federal law or federal regulation governing the receipt of federal grants for aid provided under the Article." (Article IV "Aid to Families with Dependent Children" of the Public Aid Code). The Department contends that it is implementing a State work program and not the Federal program, is not requesting Federal funds for the administration of this program (which would be available if it adhered to the Federal requirements) and, therefore, is not required to have rules consistent with the Federal law and regulations.

However, as a sanction for non-cooperation with the program, the Department is planning to withhold the AFDC benefits -- benefits which are, in part, composed of Federal grant money.

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Under the Federal law, states are not permitted to withhold benefits from individuals meeting the Federal eligibility requirements. The United States Supreme Court ruled that "federal participation in state AFDC programs is conditioned on the State's offering benefits to all persons who are eligible under federal standards," except that the state determines who is needy. (emphasis added) The state may only exclude eligible individuals if aid is made optional by another provision of the Federal law. Burns v. Alcala 420 U.S. 575, 95 S.Ct. 1180, 43 L.Ed.2d 469, on remand 514 F.2d 1002 (1975). A community work experience program is such an option under which the state may exclude individuals as a sanction for not cooperating with the program. The Department cannot create its own requirements for receiving assistance; if it opts to have a work experience program, that program must be consistent with the Federal law and requirements.

The Joint Committee objects to Sections 112.76 and 112.77 of the Department of Public Aid's rules because they violate Federal regulations (45 C.F.R. 238) and Section 4-1.10 of the Public Aid Code (Ill. Rev. Stat. 1981, ch. 23, par 4-1.10).

Date Agency Response Received: November 10, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: November 14, 1983

Effective Date: November 9, 1983

Budgeting Earned Income of Applicants Employed on Date of Application and/or Date of Decision (AFDC) and Assets (AFDC) (89 Ill. Adm. Code 112.150)

Initial Publication in Illinois Register: September 23, 1983

Date Second Notice Received: November 10, 1983

Joint Committee Objection: December 15, 1983

Specific Objection:

The Joint Committee objects to the proposed amendments to Section 112.150(b) because, by requiring consideration of the entire value of certain jointly held assets in the determination of financial eligibility for Aid to Families with Dependent Children (AFDC), the rule violates the requirements of Ill. Rev. Stat. (1981), ch. 23, par. 4-1.6, 45 CFR § 233.20(a)(3)(ii)(d)(1982), and 42 U.S.C. § 602(a)(7)(1982).

89 Ill. Adm. Code 112.50 requires that the value of non-exempt assets be considered in determining financial eligibility for, and the amount of cash assistance under the

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Aid to Families with Dependent Children program of the Department of Public Aid. As published on first notice, the proposed rulemaking added a new paragraph (b) which provided that, in the case of jointly held assets, the "entire equity value" of the asset would be considered unless "the client documents that he/she owns less than the entire value of the asset; or does not have access to the asset." On second notice the Department of Public Aid deleted the phrase, "owns less than the entire value of the asset." The effect of this would be to consider the entire equity value of jointly held assets, no matter in what form or share they are held, unless the client can document no access to the asset. The Department has agreed to include language explaining what constitutes "documentation."

Ill. Rev. Stat. (1981), ch. 23, par. 4-1.6, provides income and other resources "available" to an applicant must be insufficient to equal the grant amount established by Department regulation. 45 CFR § 233.20(a)(3)(ii)(1982) provides that in establishing financial eligibility only "resources available for current use shall be considered; . . . resources are considered available both when actually available and when the applicant has a legal interest in a liquidated sum and has the legal ability to make such sums available for support and maintenance." 42 U.S.C. § 602(a)(7)(1982) provides for consideration of resources "currently available" to AFDC recipients.

The Department was asked to further clarify and to cite its statutory authority for its policy of considering the entire equity value of jointly held assets as available resources. The Department explained that, if an applicant shares title in any form to real or personal property with another, the entire equity value of the property (and not just the applicants share) would be considered in determining the applicant's eligibility unless the applicant could document total lack of access to the asset. As statutory authority, the Department cited Section 4-2 of the Public Aid Code, which provides that the amount and nature of financial aid shall be determined in accordance with standards, rules, and regulations of the Department.

Section 112.150(b) violates both the Illinois statute and federal statutes and regulations. The Illinois and U.S. statutes uses the term available resources, and 45 CFR § 233.20(a)(3)(ii)(d)(1982) requires actual availability or that the applicant must have a legal interest in a liquidated sum and the legal ability to make such sums available for support and maintenance. The entire equity value of property held with other parties is not necessarily currently available to the client, and the client has no legal interest in the entire equity value. A co-owner has no legal ability to gain control or access to the entire equity value of jointly held personal or real property. Rather, it would appear that the Department

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could consider only the value of a co-owner's interest in the property as available resources. This conclusion is supported in case law construing the federal statutes and regulations at issue here. (See Parson v. Miller, 520 P.2d 607 (Nev. 1974) and Brumit v. State Department of Public Health and Welfare, 521 S.W.2d 445 (Mo. 1975))

Section 4-2 of the Public Aid Code cannot be used as authority for the Department's policy. Resources not available under Section 4-1.6 cannot be deemed available under the general language of Section 4-2 to determine the amount and nature of aid. Further, Section 4-2 cannot override Federal policy, and Section 4-1.6 should be construed consistently with the overriding Federal law.

The Department stated, in response to questions as to why it was it was pursuing this policy, that it was more convenient to include the entire equity value of the asset instead of including the client's proportionate share, that the U.S. Department of Health and Human Services policy is to include the entire value of the asset, and that the burden should be on the recipient to prove lack of assets. The U.S. Department of Health and Human Services sent a letter to the Department outlining it's policy on valuing the recipient's resources. The letter, however, dealt only with jointly-held accounts. With a joint account the entire amount in the account is available to either party. This is in direct contrast to what is legally available to a co-owner of jointly held personal and real property. The Department, therefore, is carrying its rule beyond the federal method of valuation, and is including personal property and real property in addition to jointly-held accounts. A concern as to burden is misplaced; the problem with the Department's policy is not who must prove what, but with the valuation of the applicant's asset given proven joint ownership. The Department's convenience is irrelevant in this situation.

For the preceding reasons, the Joint Committee objects to Section 112.150(b) because it violates the statutory requirements of Ill. Rev. Stat., (1981) ch. 23, par. 4-1.6, 42 U.S.C. § 602(a)(7) (1982), 45 CFR § 233.30(a)(3)(ii)(d) (1982).

Date Agency Response Received: Pending

Nature of Agency Response: Pending

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

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DEPARTMENT OF PUBLIC HEALTH

Illinois Plumbing Code

Initial Publication in Illinois Register: April 23, 1983

Date Second Notice Received: December 8, 1982

Joint Committee Objection: January 25, 1983

Specific Objection(s):

Proposed Table 3.7, Item 92 prohibits the use of chlorinated polyvinyl chloride (CPVC) pipe, tubing, and fittings in hot water systems.

The Joint Committee objects to Table 3.7, Item 92 because the Department has not provided an adequate justification and rationale for prohibiting the use of chlorinated polyvinyl chloride (CPVC) pipe, tubing, and fittings in hot water distribution systems and has failed to reasonably consider the negative economic effect this prohibition could have on Illinois citizens, thereby violating Section 220.900(b) of the Joint Committee's Operational Rules.

Date Agency Response Received: February 9, 1983

Nature of Agency Response: Modification to Meet Objection

Publication as Adopted in the Illinois Register: April 8, 1983

Effective Date: March 24, 1983

Fifth Edition of Chapter No. 3, The Illinois Health Care Facilities Plan

Initial Publication in Illinois Register: October 29, 1982

Date Second Notice Received: February 8, 1983

Joint Committee Objection: March 22, 1983

Specific Objection:

Proposed Section 3.06.C.02.G of Chapter 3 contains the review criteria for appropriate floor area for proposals to add beds or establish a new category of service. Proposed Section 3.06.D.02.C contains the review criteria for appropriate floor area for proposals to modernize a facility. Both of these rules require consideration of "the gross square footage of the proposed project in comparison to State and National norms for like services" The rules do not state specifically what constitutes these norms.

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The Joint Committee objects to proposed Sections 3.06.C.02.G and 3.06.D.02.C of Chapter 3 because the sections are vague and do not contain adequate standards for the exercise of a discretionary power of the Board, and because the Board has adopted guidelines of professional and trade entities without filing such guidelines as required by the Illinois Administrative Procedure Act.

Date Agency Response Received: April 9, 1983

Nature of Agency Response: Withdrawal to Meet Objection

Publication as Adopted in the Illinois Register: April 22, 1983

Effective Date: April 15, 1983

Fifth Edition of Chapter No. 3, The Illinois Health Care Facilities Plan

Initial Publication in Illinois Register: October 29, 1982

Date Second Notice Received: February 8, 1983

Joint Committee Objection: March 22, 1983

Specific Objection:

Proposed Section 3.06.R.03.D of Chapter 3 contains the review criteria for variances for facilities for the developmentally disabled. One of the requirements for a variance is that the proposed project will not result in a "proliferation" of this type of facility within the immediate community or area. The rule contains no standards for what constitutes a "proliferation" of this type of facility.

The Joint Committee objects to proposed Section 3.06.R.03.D of Chapter 3 because the rule is vague and contains insufficient standards for the exercise of a discretionary power by the Board.

Date Agency Response Received: April 9, 1983

Nature of Agency Response: Withdrawal to Meet Objection

Publication as Adopted in the Illinois Register: April 22, 1983

Effective Date: April 15, 1983

Family Planning Services, Title X (77 Ill. Adm. Code 635)

Initial Publication in Illinois Register: July 15, 1983

Date Second Notice Received: October 11, 1983

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Joint Committee Objection: November 17, 1983

Specific Objection:

The Joint Committee objects to Section 635.180(g) because it does not contain standards for the exercise of the discretionary power to summarily suspend grants for family planning services, as required by Section 4.02 of the Illinois Administrative Procedure Act.

Section 635.180 governs termination of grants to public and private not-for-profit agencies for the provision of family planning services. Under paragraph (c) the Director may terminate or suspend a grant for failure to comply with the Population Research Act of 1970, after notice and opportunity for a hearing. Under paragraph (g) however, the Director may order summary suspension of a grant if he finds that the "public interest, health, safety, or welfare requires emergency action," and unless the Department has received "adequate" assurance that the funds held by the delegate agency are secure.

Section 4.02 of the Illinois Administrative Procedure Act requires that "each rule which implements a discretionary power shall include the standards by which the agency shall exercise this power." The Department was asked what standards would be used to determine whether assurances were "adequate" and under what circumstances such an order might be issued.

The Department explained that the decision to issue such order is totally within the discretionary power of the Director subject only to the requirement that, in his opinion, the "Public interest . . . health, safety or welfare requires emergency action," and that, in his opinion, assurances as to the security of funds are not "adequate." This amounts to complete discretionary power vested in the Director.

Section 635.180(g) provides no standards for the exercise of the Director's discretionary power, as required by Section 4.02 of the Illinois Administrative Procedure Act.

Date Agency Response Received: December 14, 1983

Nature of Agency Response: Modified to Meet Objection

Publication as Adopted in the Illinois Register: December 23, 1983

Effective Date: December 9, 1983

Alcoholism and Intoxification Treatment Programs (77 Ill. Adm. Code 200)

Initial Publication in Illinois Register: October 22, 1982

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Date Second Notice Received: August 24, 1983

Joint Committee Objection: November 17, 1983

Specific Objection:

The Joint Committee objects to Section 200.202(f) because (1) the Department lacks the statutory authority to issue an annual license based upon an acceptable plan of correction which will bring the facility or program into substantive compliance with the rules and the Act, and (2) because the rules fail to include adequate standards and criteria for determining what constitutes an "acceptable plan of correction."

Proposed Section 200.203(g) stated that "An annual license will be issued if minimum compliance is met." (Emphasis added) In later versions of the provision, however, the Department indicated it would add "or if there is an acceptable plan of correction for any deficiencies."

Section 7 of the Act provides that a provisional license may be issued by the Director if he finds that a facility or program which does not substantially comply with the rules and the Act, and has undertaken changes to correct the deficiency which will render the facility or program in substantial compliance. The Director will inform the licensee of the deficiencies and the manner in which the facility or program is to substantially comply with the rules and Act. A provisional license cannot be given for longer than 6 months or be renewed.

The Department was asked what statutory authority empowers the Department to grant an annual license if an acceptable plan of correction is submitted to the Department. The Department stated that Section 7 of the Act provides such authority.

However, Section 7 of the Act only provides the Department the authority to issue a provisional license to a facility or program if the facility or program has undertaken an acceptable plan of correction to substantially comply with the rules and the Act. In addition, the provisional license can only be given for six months and cannot be renewed.

The Department was also asked what would be considered to be "minimum compliance" and when would the license be issued. The Department explained that minimum compliance is compliance with the requirements set forth throughout this part which are the minimum requirements. As noted above, the Department stated that it would delete the existing language in Section 200.203(g) and include in the adopted version of the rule in Section 200.202(f) the following language:

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An annual license will be issued if all provisions of this Part are complied with or if there is an acceptable plan of correction for any deficiencies. (Emphasis added)

The Department was then asked to include standards on how the Department would determine if a plan of correction is "acceptable." The Department responded that the facility would know what would make the plan acceptable because the Department would inform the program or facility of the deficiencies and what the facility or program must do to correct the deficiencies.

The Department argues that due to the number and diversity of deficiencies that could occur, an acceptable plan of correction "would have to be determined on a case-by-case basis according to the deficiency." Therefore, by determining the standards on a case-by-case basis, it appears that the facility will have no means of knowing what standards it must meet in proposing "an acceptable plan of correction."

Section 200.203(f) provides discretionary authority to the agency and fails to provide standards in the rule under which "an acceptable plan of correction" will be determined as required by Section 4.02 of the Illinois Administrative Procedure Act.

The Joint Committee objects to Section 200.203(f) as the Department lacks the statutory authority to issue an annual license based upon an acceptable plan of correction which will bring the facility or program into compliance with the rules and the Act. In addition, the Joint Committee objects to Section 200.230(f), because it fails to include adequate standards for determining what constitutes an acceptable plan of correction.

Date Agency Response Received: Pending

Nature of Agency Response: Pending

Publication as Adopted in the Illinois Register: November 4, 1983

Effective Date: October 21, 1983

Alcoholism and Intoxification Treatment Programs (77 Ill. Adm. Code 200)

Initial Publication in Illinois Register: October 22, 1982

Date Second Notice Received: August 24, 1983

Joint Committee Objection: November 17, 1983

Specific Objection:

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The Joint Committee objects to Section 200.202(g), because the section fails to include adequate standards and criteria, as required by Section 4.02 of the Illinois Administrative Procedure Act, for determining when the Department "may" issue a provisional license.

Proposed Section 200.203(h) stated that "The Department may issue a provisional license if warranted." (Emphasis added)

The Department was asked to specify the standards that the Department would be using to decide whether a provisional license is "warranted." The Department replied that the provisional license would be issued in accordance with Section 7 of the Act and that a reference to Section 7 of the Act would be included in the adopted version of the rule in Section 200.

Section 7 of the Act provides that the Director may issue a provisional license to a facility or program which does not substantially comply with the rules and Act if the Director finds that the facility or program has undertaken changes to correct the deficiency and which will render the facility or program in substantial compliance. The Director will inform the licensee of the deficiencies and the manner in which the facility or program is to substantially comply with the rules and Act. A provisional license cannot be given for longer than 6 months or be renewed.

The Department was then asked to explain how "substantially comply" will be determined as provided in the statute. The Department stated that "substantially comply" means that the facility will be "pretty well" in accordance with the Act.

The Department argued that a certain degree of discretion is needed because the degree of severity of the deficiency must be taken into consideration along with the past history of violations of the facility or program. Thus, the Department has already been able to state at least some basic standards for the use of its discretion. It declined, however, to put these standards in the rule. It appears, therefore, that a facility or program will have no means of knowing how the Department will determine if a facility or program is or is not in substantial compliance. Section 200.202(g) provides discretionary authority to the agency and fails to provide standards in the rule under which the "Director may issue a provisional license to a facility or program which does not substantially comply with the Act." Therefore, the Joint Committee objects to Section 200.202(g).

Date Agency Response Received: Pending

Nature of Agency Response: Pending

Publication as Adopted in the Illinois Register: November 4, 1983

1983 STATEMENTS OF OBJECTION
TO PROPOSED RULES

Effective Date: October 21, 1983

Alcoholism and Intoxification Treatment Programs (77 Ill. Adm. Code 200)

Initial Publication in Illinois Register: October 22, 1982

Date Second Notice Received: August 24, 1983

Joint Committee Objection: November 17, 1983

Specific Objection:

The Joint Committee objects to Section 200.204 because the Department requires an application fee for renewal of a license for an outpatient program, in violation of Section 11 of the Act.

Section 200.204(b) states that

The annual application fee for renewal of the initial license for each residential and each outpatient program for an applicant shall be fifty dollars (\$50.00). The maximum fee for all programs combined shall be one hundred dollars (\$100.00). (Emphasis added)

Section 11 of the Act states that "All renewals of the initial license issued to the Alcoholism treatment facility shall bear a fee of not more than \$100.00" (Emphasis added)

The Department was asked to explain its statutory authority to charge a fee for licensure of an outpatient program and brought to the Department's attention that Section 11 of the Act only refers to a facility and not a program in regards to the renewal fee. The Department stated that it interpreted the definition of facility as "the premises" and that programs were the "operations" of the facility. However, Section 3 of the Act refers to a "detoxification facility," a "residential alcoholism rehabilitation center," and a "halfway house" as facilities while an "alcoholism outpatient program" is a program. Section 11 of the Act provides that "the Department shall adopt minimum rules, regulations and standards for alcoholism treatment facilities and programs." (Emphasis added) In addition, it appears that not charging a fee for an outpatient program would be logical since the program does not have to submit drawings of the premises, patients are not staying at the premises, and there is not as much to inspect.

Date Agency Response Received: Pending

Nature of Agency Response: Pending

Publication as Adopted in the Illinois Register: November 4, 1983

1983 STATEMENTS OF OBJECTION
TO PROPOSED RULES

Effective Date: October 21, 1983

Alcoholism and Intoxification Treatment Programs (77 Ill. Adm. Code 200)

Initial Publication in Illinois Register: October 22, 1982

Date Second Notice Received: August 24, 1983

Joint Committee Objection: November 17, 1983

Specific Objection:

The Joint Committee objects to Section 200.205(c), because the rule fails to include standards, as required by Section 4.02 of the Illinois Administrative Procedure Act, for determining what reports, records, data, statistics, and information the Department may require.

Proposed Section 200.206(c) stated in part that "Each alcoholism treatment facility or program shall provide the Department, on request, any reports, records, data, statistics, schedules and information which the department may require for the administration of the Act and these rules and regulations."

The Department was asked to provide the standards that the Department will use in determining what reports, records, data, statistics, schedules and other information it will require for the administration of the Act and Part 200. The Department explained that the reports a facility or program are to provide will simply be those necessary for the administration of the Act. The Department stated that it would reword Section 200.206(c) by inserting "shall" in lieu of "may" and renumber it as Section 200.205(c).

Section 200.205(c) still does not specify what reports the facility is to provide to the Department. The Department stated that the inspector generally looks at such items as the number of clients being served, referral information, etc. However, the Department stated that this may not always be the case.

The Department repeatedly stated that the reports it will require are those that the Department deems to be necessary for the administration of the Act. However, the Department could not, or would not, explain what reports it might deem necessary under the Act. Without some sort of standards it would be difficult for a facility to know what information it would have to keep or on what form to keep it in order to provide any reports or data the Department happens to "deem necessary."

1983 STATEMENTS OF OBJECTION
TO PROPOSED RULES

Date Agency Response Received: Pending

Nature of Agency Response: Pending

Publication as Adopted in the Illinois Register: November 4, 1983

Effective Date: October 21, 1983

DEPARTMENT OF REGISTRATION AND EDUCATION

Section(s) 280.10 of Part 280: Medical Practice Act of Title 68

Initial Publication in Illinois Register: November 29, 1982

Date Second Notice Received: February 25, 1983

Joint Committee Objection: March 22, 1983

Specific Objection:

This rulemaking represents the Department of Registration and Education's amendments to the Medical Practice Act of Title 68 whereby an initial approval of certain programs of medical education and a mechanism to provide for the periodic review of these programs is proposed.

The Joint Committee objects to proposed Section 280.10(d) because it fails to include rules on the procedure an applicant from a non-accredited medical program must utilize to achieve licensure, in violation of Section 5(a) of the Illinois Administrative Procedure Act.

Date Agency Response Received: March 24, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: May 13, 1983

Effective Date: April 28, 1983

Section(s) 280.10 of Part 280: Medical Practice Act of Title 68

Initial Publication in Illinois Register: November 29, 1982

Date Second Notice Received: February 25, 1983

Joint Committee Objection: March 22, 1983

Specific Objection:

This rulemaking represents the Department of Registration and Education's amendments to the Medical Practice Act of Title 68

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whereby an initial approval of certain programs of medical education and a mechanism to provide for the periodic review of these programs is proposed.

The Joint Committee objects to proposed Section 280.10(e) because it fails to include adequate standards and criteria for the exercise of the agency's discretion to schedule a date for a re-evaluation of a medical program, in violation of Section 4.02 of the Illinois Administrative Procedure Act.

Date Agency Response Received: March 24, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: May 13, 1983

Effective Date: April 23, 1983

Section(s) 280.10 of Part 280: Medical Practice Act of Title 68

Initial Publication in Illinois Register: November 29, 1982

Date Second Notice Received: February 25, 1983

Joint Committee Objection: March 22, 1983

Specific Objection:

This rulemaking represents the Department of Registration and Education's amendments to the Medical Practice Act of Title 68 whereby an initial approval of certain programs of medical education and a mechanism to provide for the periodic review of these programs is proposed.

The Joint Committee objects to proposed Sections 280.10(f)(1) and 280.10(g)(2) because they fail to include adequate standards and criteria for the exercise of the agency's discretion to recommend that a program of medical education be disapproved, in violation of Section 4.02 of the Illinois Administrative Procedure Act. Section 280.10(f)(1) also fails to include rules on the procedure for submission of documentation for accreditation in violation of Section 5(a) of the Illinois Administrative Procedure Act.

Date Agency Response Received: March 24, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: May 13, 1983

Effective Date: April 28, 1983

1983 STATEMENTS OF OBJECTION
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Section(s) 280.10 of Part 280: Medical Practice Act of Title 68

Initial Publication in Illinois Register: November 29, 1982

Date Second Notice Received: February 25, 1983

Joint Committee Objection: March 22, 1983

Specific Objection:

This rulemaking represents the Department of Registration and Education's amendments to the Medical Practice Act of Title 68 whereby an initial approval of certain programs of medical education and a mechanism to provide for the periodic review of these programs is proposed.

The Joint Committee objects to proposed Section 280.10(f)(1) because it fails to include adequate standards and criteria for the exercise of the agency's discretion to set a date after which a person graduating from a recently disapproved program of medical education shall be considered not to have graduated from an approved program in violation of Section 4.02 of the Illinois Administrative Procedure Act.

Date Agency Response Received: March 24, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: May 13, 1983

Effective Date: April 28, 1983

Section(s) 280.10 of Part 280: Medical Practice Act of Title 68

Initial Publication in Illinois Register: November 29, 1982

Date Second Notice Received: February 25, 1983

Joint Committee Objection: March 22, 1983

Specific Objection:

This rulemaking represents the Department of Registration and Education's amendments to the Medical Practice Act of Title 68 whereby an initial approval of certain programs of medical education and a mechanism to provide for the periodic review of these programs is proposed.

The Joint Committee objects to proposed Section 280.10(g)(1) because it fails to include adequate standards and criteria for the exercise of the agency's discretion to re-evaluate any disapproved medical program, in violation of Section 4.02 of the Illinois Administrative Procedure Act, and because it fails

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to include the agency's actual policy of granting a re-evaluation, in violation of Section 5(a) of the Illinois Administrative Procedure Act.

Date Agency Response Received: March 24, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: May 13, 1983

Effective Date: April 28, 1983

Section(s) 280.10 of Part 280: Medical Practice Act of Title 68

Initial Publication in Illinois Register: November 29, 1982

Date Second Notice Received: February 25, 1983

Joint Committee Objection: March 22, 1983

Specific Objection:

This rulemaking represents the Department of Registration and Education's amendments to the Medical Practice Act of Title 68 whereby an initial approval of certain programs of medical education and a mechanism to provide for the periodic review of these programs is proposed.

The Joint Committee objects to proposed Section 280.10(g)(2) because it fails to include adequate standards and criteria for the exercise of the agency's discretion to determine what documentation is necessary for re-evaluation of a medical program, in violation of Section 4.02 of the Illinois Administrative Procedure Act.

Date Agency Response Received: March 24, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: May 13, 1983

Effective Date: April 28, 1983

Section(s) 280.10 of Part 280: Medical Practice Act of Title 68

Initial Publication in Illinois Register: November 29, 1982

Date Second Notice Received: February 25, 1983

Joint Committee Objection: March 22, 1983

Specific Objection:

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This rulemaking represents the Department of Registration and Education's amendments to the Medical Practice Act of Title 68 whereby an initial approval of certain programs of medical education and a mechanism to provide for the periodic review of these programs is proposed.

The Joint Committee objects to proposed Section 280.10(g)(2) because it fails to include adequate standards and criteria for the exercise of the agency's discretion to grant an extension of the time frame for re-evaluation, in violation of Section 4.02 of the Illinois Administrative Procedure Act.

Date Agency Response Received: March 24, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: May 13, 1983

Effective Date: April 28, 1983

Section(s) 280.10 of Part 280: Medical Practice Act of Title 68

Initial Publication in Illinois Register: November 29, 1982

Date Second Notice Received: February 25, 1983

Joint Committee Objection: March 22, 1983

Specific Objection:

This rulemaking represents the Department of Registration and Education's amendments to the Medical Practice Act of Title 68 whereby an initial approval of certain programs of medical education and a mechanism to provide for the periodic review of these programs is proposed.

The Joint Committee objects to Section 280.10(k) because it violates Section 220.900(b)(3) of the Joint Committee's Operational Rules by failing to adequately inform affected persons of the effect of the proposed amendment to Section 280.10(k).

Date Agency Response Received: March 24, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: May 13, 1983

Effective Date: April 28, 1983

1983 STATEMENTS OF OBJECTION
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DEPARTMENT OF TRANSPORTATION

Hazardous Materials Transportation Regulations

Initial Publication in Illinois Register: November 12, 1982

Date Second Notice Received: January 31, 1983

Joint Committee Objection: February 23, 1983

Specific Objection:

The Department of Transportation has an unwritten policy of charging \$15 for copies of the Illinois Hazardous Materials Regulations.

The Joint Committee objects to this unwritten policy because the imposition of this \$15 charge falls within the definition of "rule" found in Section 3.09 of the Illinois Administrative Procedure Act, hence this policy should be in the form of a validly promulgated rule.

Date Agency Response Received: April 5, 1983

Nature of Agency Response: Modified to Meet Objection

Publication as Adopted in the Illinois Register: April 1, 1983

Effective Date: April 2, 1983

Hazardous Materials Transportation Regulations

Initial Publication in Illinois Register: November 12, 1982

Date Second Notice Received: January 31, 1983

Joint Committee Objection: February 23, 1983

Specific Objection:

This rulemaking represents the Department of Transportation's amendments to the Hazardous Materials Transportation Regulations.

The Joint Committee objects to this rulemaking because the rulemaking, in the definitions of "Hazardous Waste" and "Name of Contents" in Section 171.8, and Section 171.12(b) contain incorporations by reference of the Code of Federal Regulations not in compliance with Section 6.01 of the Illinois Administrative Procedure Act.

Date Agency Response Received: April 5, 1983

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Nature of Agency Response: Modified to Meet Objection

Publication as Adopted in the Illinois Register: April 1, 1983

Effective Date: April 2, 1983

Rule 2.4 Suspension of the Rules and Regulations Prescribed by the
Department of Transportation for Highway Construction by Contract

Initial Publication in Illinois Register: December 3, 1982

Date Second Notice Received: March 16, 1983

Joint Committee Objection: April 19, 1983

Specific Objection:

Proposed Rule 2.4(b)(1) provides in part, that the Secretary of the Department may determine that a surety will not be an acceptable source for a Contract Bond required on behalf of contractors doing work for the Department.

The Joint Committee objects to Section 2.4(b)(1) of the "Rules and Regulations Prescribed by the Department of Transportation for Highway Construction by Contract" because the proposed rulemaking fails to include the standards which the Department uses to determine the acceptability of sureties. This is in violation of Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004.02), which provides, in part, that "Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power."

Date Agency Response Received: June 2, 1983

Nature of Agency Response: Modified to Meet Objection

Publication as Adopted in the Illinois Register: June 1, 1983

Effective Date: June 10, 1983

Rule 2.4 Suspension of the Rules and Regulations Prescribed by the
Department of Transportation for Highway Construction by Contract

Initial Publication in Illinois Register: December 3, 1982

Date Second Notice Received: March 16, 1983

Joint Committee Objection: April 19, 1983

Specific Objection:

1983 STATEMENTS OF OBJECTION
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Proposed Rule 2.4(b)(1) provides, in part, that the Secretary of the Department may determine that a surety is not acceptable if there is adequate evidence that the surety has failed to comply with its obligations under the Contract Bond, or under State and Federal laws or Departmental rules and regulations.

The Joint Committee objects to Section 2.4(b)(1) of the "Rules and Regulations Prescribed by the Department of Transportation for Highway Construction by Contract" because the rulemaking fails to adequately inform the affected public of the applicable State and Federal laws and Departmental rules and regulations with which the sureties must comply.

Date Agency Response Received: June 2, 1983

Nature of Agency Response: Modified to Meet Objection

Publication as Adopted in the Illinois Register: June 1, 1983

Effective Date: June 10, 1983

Rule 2.4 Suspension of the Rules and Regulations Prescribed by the
Department of Transportation for Highway Construction by Contract

Initial Publication in Illinois Register: December 3, 1982

Date Second Notice Received: March 16, 1983

Joint Committee Objection: April 19, 1983

Specific Objection:

Section 2.4(b)(3) of the proposed rule provides that the Secretary of the Department may affirm or modify the "Notice of Suspension" sent to a surety who has been notified that it is unacceptable as provider of the required Contract Bond.

The Joint Committee objects to Section 2.4(b)(3) of the "Rules and Regulations Prescribed by the Department of Transportation for Highway Construction by Contract" because it fails to state the standards used by the Secretary of the Department to determine whether a "Notice of Suspension" will be affirmed or modified. This is in violation of Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004.02), which provides, in part, that "Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power."

Date Agency Response Received: June 2, 1983

Nature of Agency Response: Modified to Meet Objection

1983 STATEMENTS OF OBJECTION
TO PROPOSED RULES

Publication as Adopted in the Illinois Register: June 1, 1983

Effective Date: June 10, 1983

Rule 2.4 Suspension of the Rules and Regulations Prescribed by the
Department of Transportation for Highway Construction by Contract

Initial Publication in Illinois Register: December 3, 1982

Date Second Notice Received: March 16, 1983

Joint Committee Objection: April 19, 1983

Specific Objection:

Section 2.4(b)(3) of the proposed rule provides that the Secretary of the Department may modify or lift a period of suspension of a surety at any time for good cause or when in the best interest of the Department.

The Joint Committee objects to Section 2.4(b)(3) of the "Rules and Regulations prescribed by the Department of Transportation for Highway Construction by Contract" because the rulemaking fails to include the standards used by the Secretary in determining "good cause" and whether it is in the Department's best interest to modify or lift a suspension against a surety. This is in violation of Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004.02), which provides, in part, that "Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power."

Date Agency Response Received: June 2, 1983

Nature of Agency Response: Modified to Meet Objection

Publication as Adopted in the Illinois Register: June 1, 1983

Effective Date: June 10, 1983

Rule 2.4 Suspension of the Rules and Regulations Prescribed by the
Department of Transportation for Highway Construction by Contract

Initial Publication in Illinois Register: December 3, 1982

Date Second Notice Received: March 16, 1983

Joint Committee Objection: April 19, 1983

Specific Objection:

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Proposed Section 2.4(b) provides that the Secretary of the Department may determine that a surety will not be an acceptable source for any contract awarded by or requiring the concurrence of the Department. Rule 2.4(b) further provides that if a surety is determined to be unacceptable then the surety will be suspended for a period of time not exceeding twelve months.

The Joint Committee objects to the "Rules and Regulations Prescribed by the Department of Transportation for Highway Construction by Contract" because the Department lacks the specific statutory authority to suspend sureties and because the proposed rulemaking usurps the authority granted by the General Assembly to the Illinois Department of Insurance.

Date Agency Response Received: June 2, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: June 1, 1983

Effective Date: June 10, 1983

Rule 2.4 Suspension of the Rules and Regulations Prescribed by the
Department of Transportation for Highway Construction by Contract

Initial Publication in Illinois Register: December 3, 1982

Date Second Notice Received: March 16, 1983

Joint Committee Objection: April 19, 1983

Specific Objection:

Proposed Rule 2.4(b) of the proposed rulemaking provides, in part, that a surety will be deemed unacceptable if it is not listed in the U.S. Department of Treasury Circular 570.

The Joint Committee objects to Rule 2.4(b) of the "Rules and Regulations prescribed by the Department of Transportation for Highway Construction by Contract" because the Department is impermissibly delegating its authority to approve sureties to the U.S. Treasury Department.

Date Agency Response Received: June 2, 1983

Nature of Agency Response: Modified to Meet Objection

Publication as Adopted in the Illinois Register: June 1, 1983

Effective Date: June 10, 1983

1983 STATEMENTS OF OBJECTION
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Rule 2.4 Suspension of the Rules and Regulations Prescribed by the
Department of Transportation for Highway Construction by Contract

Initial Publication in Illinois Register: December 3, 1982

Date Second Notice Received: March 16, 1983

Joint Committee Objection: April 19, 1983

Specific Objection:

Proposed Rule 2.4(b) provides, in part, that a surety will be determined to be unacceptable if it is not listed in U.S. Department of Treasury Circular 570.

The Joint Committee objects to Rule 2.4(b) of the "Rules and Regulations Prescribed by the Department of Transportation for Highway Construction by Contract" because the rule impermissibly attempts to incorporate guidelines in violation of the requirements of Section 5.01 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1005.01).

Date Agency Response Received: June 2, 1983

Nature of Agency Response: Modified to Meet Objection

Publication as Adopted in the Illinois Register: June 1, 1983

Effective Date: June 10, 1983

Rule 2.4 Suspension of the Rules and Regulations Prescribed by the
Department of Transportation for Highway Construction by Contract

Initial Publication in Illinois Register: December 3, 1982

Date Second Notice Received: March 16, 1983

Joint Committee Objection: April 19, 1983

Specific Objection:

Proposed Section 2.4(b)(2) provides that the Secretary shall provide a surety determined to be unacceptable with a written notice, and specify the reasons for, and the duration of, such determinations. This section provides that the surety may request an "opportunity to be heard" by the Secretary or the Secretary's designee within fifteen days of the notice of suspension, and provides that the Secretary shall provide the surety with an opportunity to be heard within ten days of the request.

Section 2.4(b)(3) provides that within five working days of hearing the suspended surety's evidence and arguments, the

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Secretary shall affirm or modify the "Notice of Suspension." This section further provides that the Secretary may lift or shorten the period of suspension of a surety at any time during a period of suspension for good cause shown or when in the best interest of the Department.

The Joint Committee objects to Section 2.4(b) of the "Rules and Regulations Prescribed by the Department of Transportation for Highway Construction by Contract" because the rulemaking violates the hearing requirements under Sections 3.04 and 16(c) of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, pars. 1003.04 and 1016(c)), and because the proposed rulemaking unconstitutionally deprives sureties of due process of law in that it permits the suspension of a surety without prior notice or hearing.

Date Agency Response Received: June 2, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: June 1, 1983

Effective Date: June 10, 1983

Rule 2.4 Suspension of the Rules and Regulations Prescribed by the
Department of Transportation for Highway Construction by Contract

Initial Publication in Illinois Register: December 3, 1982

Date Second Notice Received: March 16, 1983

Joint Committee Objection: April 19, 1983

Specific Objection:

Section 2.4(b)(1) of the proposed rule provides that the Secretary of the Department may determine that a surety is not an acceptable source of a Contract Bond for a period of up to 12 months.

The Joint Committee objects to Section 2.4(b)(1) of the "Rules and Regulations Prescribed by the Department of Transportation for Highway Construction by Contract" on the basis that it fails to include the standards used by the Secretary of the Department to determine the length of time a surety would be suspended. This is in violation of Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004.02); which provides, in part, that "each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power."

1983 STATEMENTS OF OBJECTION
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Date Agency Response Received: June 2, 1983

Nature of Agency Response: Modified to Meet Objection

Publication as Adopted in the Illinois Register: June 1, 1983

Effective Date: June 10, 1983

Constitutional Officers

SECRETARY OF STATE - MERIT COMMISSION

Rules of the Merit Commission

Initial Publication in Illinois Register: September 9, 1983

Date Second Notice Received: October 25, 1983

Joint Committee Objection: November 17, 1983

Specific Objection:

The Joint Committee objects to Sections 11.06, 11.07, 13.02, 15.04, 15.05(2), 15.14, and 16.01 of the Secretary of State's "Rules of the Merit Commission" because the proposed rulemaking fails to include the standards used by the Merit Commission and Hearing Officers in making discretionary determinations.

The proposed rules contain numerous instances in which the standards used by the Merit Commission and Hearing Officers in making discretionary determinations are not included within the rules. Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004.02) requires that each rule which implements a discretionary power to be exercised by an agency must include the standards by which the agency shall exercise that power. This section also requires that such standards be stated as precisely and clearly as practicable under the conditions, in order to clearly inform those persons affected by the rule. The Merit Commission has attempted to create discretionary powers in these rules, through the use of the discretionary term "may," without including the standards and criteria which will be used in the exercise of these powers.

In each instance, the Merit Commission was asked to state the standards used by the Commission or Hearing Officer in making these determinations, and to include these standards within the rules. The following is a discussion of the applicable rules and the Merit Commission's explanation for retaining the discretionary language within each rule without including the standards to be used in the exercise of that discretion.

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- (a) Section 15.14 states that the Hearing Officer may allow the Petitioner and Respondent to make opening statements. And, by implication, the Hearing Officer may also not allow either party to make an opening statement. This rule also provides that the form of the closing statement (written or oral) shall be at the discretion of the Hearing Officer. The Commission explained that whether or not opening statements will be permitted depends upon the complexity of the case, and therefore the Hearing Officer makes this determination. The Commission also stated that parties are permitted, at their discretion, to make closing arguments, but the form of these closing arguments is determined by the Hearing Officer. The Commission failed to include language to indicate the conditions under which the Hearing Officer will and will not allow opening statements, and how the form of the closing statements is determined by the Hearing Officer.
- (b) Section 11.07 provides that the Commission may make its decision on the facts before it if sufficient facts exist, or it may default the non-complying party. The Commission explained that a decision will be made if sufficient facts exist to determine that an error was made; however the Commission retains the discretion to default the non-complying party, pursuant to Section 11.07. The Commission has failed to include within this rule the circumstances under which one, rather than the other, discretionary determination will be made. The importance of such a decision to both parties is apparent; yet the Commission refuses to in any way indicate the factors to be used by the Commission in making such a determination.
- (c) Section 11.06 states that the Commission may make its decision on the pleadings, or it may order formal hearings at the request of either party or upon its own motion. The Commission explained that pursuant to Section 11.06, a decision on the pleadings will be made if sufficient non-controverted facts exist; otherwise a decision may be made in the pre-hearing conference, if one is held, or in formal hearings, if it is determined that disputes of fact or law relevant to the case exist. The Commission agreed to amend the first part of this rule to include "if sufficient non-controverted facts exist," but stated that the second "may" could not be changed to "shall" because formal hearings are not always held. Since the Commission is retaining the discretion to hold or not hold a formal hearing, the Illinois Administrative Procedure Act requires that the standards for the use of that discretion be indicated within the rule. The Commission has failed to comply.

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- (d) Section 13.02 states that the Commission may summarily dismiss an appeal which fails to allege specific and sufficient facts. By necessary implication, therefore, the Commission may also decide to not summarily dismiss such an appeal. The Commission explained that in every case which fails to allege specific and sufficient facts, the Hearing Officer will propose a summary dismissal, but Section 13.02 must be read in conjunction with Section 15.19; therefore, even if the Hearing Officer proposes a summary dismissal, the Commission must consider written exceptions and legal arguments filed in response to the proposal before granting a summary dismissal. The Commission failed to indicate within the rule the policy to propose summary dismissal, subject to the Commission's review pursuant to Section 15.19. Nor will the Commission in any way limit the discretion of itself, nor indicate those standards to be used in determining whether or not an appeal will be summarily dismissed.
- (e) Section 15.04 states that individuals displaying disruptive behavior may be barred from a hearing. The Commission explained that this determination is based upon the type of the disruption, the extent to which the behavior prevents orderly proceedings, and the necessity of the party to the hearing; however the Commission refused to include these factors within Section 15.04.
- (f) Section 15.05(2) states that the Hearing Officer may enter an appropriate order to permit or require pleading over or amending or terminating the matter in whole or in part. The Commission explained that Section 15.05(2) would be amended to read the "Hearing Officer shall rule and issue an appropriate order to permit or require pleading over or amending or terminating the matter in whole or in part." However, this change obviously does not remedy the problem because the Hearing Officer retains broad discretion to decide whether to allow or require new pleadings or amendments, or to simply terminate the matter. Standards used by the Hearing Officer in making this determination are not stated within the rule.
- (g) Section 16.01 provides that the Commission may remand a case to the Hearing Officer for further proceedings until the decision is final. The Commission explained that it can remand the case to the Hearing Officer to hear more evidence, or for any other reason the Commission decides because the Hearing Officers are employees of and subject to the discretion of the Commission. This rule fails to explain the circumstances under which the Commission will decide to remand a case to the Hearing Officer for further proceedings, thus allowing the Commission completely unbridled discretion to remand, ad infinitum,

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to the Hearing Officer. It may do so, under the rule,
for any reason, or for no reason at all.

This rulemaking violates Section 4.02 of the Illinois Administrative Procedure Act because the rules fail to state the standards used by the Secretary in making discretionary determinations. These rules do not state the standards as precisely and clearly as practicable under the conditions, as required by Section 4.02, nor do these rules adequately inform those persons affected by the rulemaking of the specific standards used by the Commission in making these discretionary determinations. The Commission has enumerated the applicable factors involved in making certain of these decisions, but has refused to include these factors or state that these are only applicable factors. The inclusion of the applicable factors which are used by the Commission in making these discretionary determinations would fully inform those persons affected by the rules of the applicable standards. However, the Commission's retention of unlimited discretion within these rules, without including within the rules the standards to be used in the exercise of this discretion violates Section 4.02 of the Illinois Administrative Procedure Act.

Date Agency Response Received: December 27, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: December 30, 1983

Effective Date: January 1, 1984

Rules of the Merit Commission

Initial Publication in Illinois Register: September 9, 1983

Date Second Notice Received: October 25, 1983

Joint Committee Objection: November 17, 1983

Specific Objection:

The Joint Committee objects to Section 5.01 of the Secretary of State's "Rules of the Merit Commission" because the proposed rulemaking does not effectuate clear understanding of the rules and fails to include within the rule the standards used by the Merit Commission to implement the "currently acceptable principles of position classification in the merit system."

Section 5.01 provides that the Commission shall approve those class specifications which meet the requirements of the Merit Employment Code and Personnel Rules, and which conform to

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"currently acceptable principles of position classification in the merit system."

The Commission was asked to explain what these "currently acceptable principles" include. The Commission explained that these "currently acceptable principles of position classification in the merit system" are: (1) progression, (2) desirable personnel requirements, (3) proper class definition, and (4) differences between promotional series. The Commission explained that these principles are widely known to persons who deal with merit employment, and therefore there is no need to delineate these principles or explain them within the rules. The Commission stated that it is not necessary that the Commissioners appointed by the Secretary of State be cognizant of these principles, because staff of the Commission is aware of and knowledgeable in dealing with these principles. The Commission did state that the present Commissioners do understand these principles.

Section 7.04 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1007.04) provides that one of the functions of the Joint Committee is the "promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules." Section 3.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1003.09) defines "rule" as "each agency statement of general applicability which implements, applies, interprets, or prescribes law or policy"

The proposed rulemaking, as it now exists, violates Sections 3.09 and 7.04 of the Act because the "currently acceptable principles of position classification in the merit system" are not included within the rule, and therefore the rulemaking does not promote an understanding on the part of the public respecting such rules. The Commission explained these four principles embodied in the phrase "currently acceptable principles of position classification in the merit system," but has failed to enumerate these principles within the rule. The insertion of these principles within the rule, along with the standards used by the Commission in interpreting these principles, would have remedied these violations. However, the Commission refused to include these principles within the rule because the Commission believes that these principles are widely known and understood by those who deal with merit employment.

Date Agency Response Received: December 27, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: December 30, 1983

Effective Date: January 1, 1984

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Rules of the Merit Commission

Initial Publication in Illinois Register: September 9, 1983

Date Second Notice Received: October 25, 1983

Joint Committee Objection: November 17, 1983

Specific Objection:

The Joint Committee objects to Sections 8.02, 9.02(1) and (2), 15.05(1), 15.07, and 16.02 of the Secretary of State's "Rules of the Merit Commission" because the proposed rules fail to include the standards used by the Merit Commission and Hearing Officers in making discretionary determinations and the Commission has failed to include relevant agency policy within the rule.

The proposed rules contain numerous instances in which the standards used by the Merit Commission and its Hearing Officers in making discretionary determinations, and the policies of the Merit Commission are not included within the rules. Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004.02) requires that each rule which implements a discretionary power to be exercised by an agency must include the standards by which the agency shall exercise that power. This section also requires that such standards shall be stated as precisely and clearly as practicable under the conditions, in order to fully inform those persons affected by the rule. The Commission has attempted to create discretionary powers in these rules without including the standards and criteria which will be used in the exercise of these powers. In each instance, the Commission was asked to state the standards used by the Commission or Hearing Officers in making these determinations, and to include these policies and standards within the rules. The following is a discussion of the applicable rules and the Commission's explanation for failing to include these policies within the rules and for retaining the discretionary language within the rule without including the standards to be used in the exercise of that discretion.

- (a) Section 8.02 provides that the Director of Personnel has 30 days after receipt of an order to initiate "appropriate" corrective action or to give a satisfactory explanation to support a conclusion that a discrepancy does not exist. If neither action is taken, the Commission shall "take such other action as is appropriate to correct such violations." The Commission explained that "appropriate corrective action" depends upon the type of violation involved, and that action is deemed to be "appropriate" only if it corrects the violation. "Such other action as is appropriate" means that the Commission can take any action necessary to correct violations. The Merit

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Commission refuses to include within the rule the standards used in making these discretionary determinations. Rather, it prefers to leave a rule which is so vague as to constitute only a threat of some unspecified action to be taken for the Director of Personnel's failure to do some unspecified thing.

- (b) Section 15.07 requires either party to furnish a list of the names and addresses of prospective witnesses if a "timely" request is made. The Commission explained that "timely" is a "legal term of art" which cannot be precisely stated because it varies depending upon the facts and circumstances of each individual case. The Commission stated that under certain circumstances, the failure of a party to reply to a request in a "timely" manner could, but would not necessarily result in the imposition of a penalty. Yet, the Commission refuses to give any type of indication in the rule when a reply must be made. The Commission further refused to include within the rule the standards used to determine whether the request was "timely." The Merit Commission also failed to include his policy concerning imposition of penalties for failure to reply in a timely manner.
- (c) Section 16.02 states that the Commission has the authority to affirm, reverse, modify, or set aside the action of the Hearing Officer. The Commission explained that it makes all final determinations after reviewing the record, and it can affirm, reverse, modify, or set aside any action of the Hearing Officer for any or no reason at all because the Hearing Officer is an employee of the Commission. The Commission refused to include within the rule an explanation of the circumstances under which the Commission would take any of these discretionary actions. This position essentially invalidates any rules which purport to in any way relate to the Hearing Officers, and renders any such rules superfluous. In Section 16.02 the Commission is in effect saying that, regardless of anything else that is said within these rules regarding the Hearing Officers, the Commission will do whatever it pleases, and will not be bound by any guidelines.
- (d) Section 15.05(1) states that the Commission "favors the practice" of submitting motions to written charges prior to the hearing date. The Commission explained that "favors the practice" should be interpreted as a "strong suggestion." However, the Commission also stated that the failure to submit motions to written charges prior to the hearing date could, but would not necessarily result in the imposition of sanctions if a party made numerous motions on the date of the hearing. The Commission failed to include this policy with respect to the imposition of sanctions within the rule.

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- (e) Section 9.02(1) provides that written charges seeking an employee's discharge, demotion, or suspension must contain facts which allege cause for the proposed disciplinary action sought, and Section 9.02(2) states that the charges must contain facts necessary to properly allege cause. Section 15.09 states that "For good cause shown the Hearings [sic] Officer on motion may quash or modify any subpoena [sic] or notice." The Commission explained that "cause" is a "legal term of art" which has been interpreted by the Illinois Supreme Court. Definition of this term, the Commission stated, is impossible because of constantly changing judicial interpretations; therefore, the Commission refused to include within the rule the standards used by the Commission and Hearing Officers in determining whether "cause" and "good cause" were shown.

This rulemaking violates Section 4.02 of the Illinois Administrative Procedure Act because the rules fail to state the standards used by the Commission in making determinations of "cause," "timeliness," and in determining whether rules or amendments will be approved, how penalties are imposed for violations of suggestions which appear in the rules, and the conditions under which the Commission will affirm, reverse, modify, or set aside the action of the Hearing Officer. These rules do not state the standards as precisely and clearly as practicable under the conditions, as required by Section 4.02, nor do these rules adequately inform those persons affected by the rulemaking of the specific standards used by the Commission in making these discretionary determinations. Staff is aware of the fact that terms such as "timely," "relevant," "cause," and "appropriate" are legal terms of art which are interpreted in numerous judicial opinions; however more precise definitions of these terms are possible and practicable, and should be included within the rules because those affected by the rules are entitled to be informed of the applicable standards.

Date Agency Response Received: December 27, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: December 30, 1983

Effective Date: January 1, 1984

Rules of the Merit Commission

Initial Publication in Illinois Register: September 9, 1983

Date Second Notice Received: October 25, 1983

Joint Committee Objection: November 17, 1983

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Specific Objection:

The Joint Committee objects to Section 9.03 of the Secretary of State's "Rules of the Merit Commission" because the proposed rule fails to include the standard of proof which the Secretary of State is required to show in order to meet its burden of proof.

Section 9.03 provides that "The burden of proof in all disciplinary hearings shall be upon the employing department."

The Commission was asked to explain what standard of proof is required in order for the various departments within the Secretary of State's office to meet its burden of proof. The Commission explained that "burden of proof" is a "legal term of art" which is judged by determining whether the party with the burden has proved its case, and that interpretation of the applicable burden of proof is not static, but changes with changing judicial interpretations. The Commission stated that Illinois courts have held that Merit Commission proceedings are civil proceedings, and therefore the applicable standard of proof is "preponderance of the evidence." However, the Commission refused to include this standard within the rule because like burden of proof, it is subject to changing judicial interpretations.

Section 7.04 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1007.04) provides that one of the functions of the Joint Committee is the "promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules." The Commission has indicated that the applicable standard of proof is "preponderance of the evidence," but the Commission refused to include this standard within the rule. The proposed rulemaking, as it now exists fails to accurately state the Commission's standard of proof, and therefore fails to promote an understanding on the part of the public respecting such rules. Therefore, this rulemaking violates Section 7.04 of the Act.

This rulemaking also violates Section 4.02 of the Illinois Administrative Procedure Act because the Commission failed to include the required standard of proof within the rule.

Date Agency Response Received: December 27, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: December 30, 1983

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1983 STATEMENTS OF OBJECTION
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Rules of the Merit Commission

Initial Publication in Illinois Register: September 9, 1983

Date Second Notice Received: October 25, 1983

Joint Committee Objection: November 17, 1983

Specific Objection:

The Joint Committee objects to Rule 4 and Sections 15.11(1), and 15.17 of the Secretary of State's "Rules of the Merit Commission" because the proposed rules do not include the standards to be used by the Merit Commission in making determinations of reasonableness and other discretionary terms.

The proposed rules contain numerous instances in which the standards used by the Merit Commission and Hearing Officers in making determinations of "reasonableness" and other discretionary determination are not included within the rules. In each instance, the Commission was asked to state the standards used by the Commission or Hearing Officer in making these determinations, and to include these standards within the rules. The following is a discussion of the applicable rules and the Commission's explanation for retaining other discretionary language within each rule.

- (a) Section 15.11(1) provides that an answer or objection to each interrogatory shall be made within a reasonable time after the service of written interrogatories, and Section 15.13 provides that the failure to answer a written request for an admission within a reasonable time shall be deemed to be an admission. In addition to the Commission's position on the term "reasonable," which is discussed below, the Commission stated that a "reasonable time" to answer interrogatories varies depending upon the length and complexity of the interrogatory, and therefore no precise time period can be stated within the rules. The difficulty in stating a time period notwithstanding, in view of the fact that failure to answer within this unknown period of time can result in an admission, the necessity of specifying the time period is obvious. The Commission also stated that, depending upon the facts and circumstances involved, the fact that an interrogatory could not be answered before the time set for the hearing might be cause for a continuance. However, the Commission refused to include within the rule any of these relevant factors, and further refused to indicate its policy with respect to continuances within the rule.
- (b) Rule 4 provides that "reasonable" requests to inspect certain documents will be granted. Section 11.02 provides that summary judgement may be granted if the Director of Personnel's submission does not set forth facts

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from which it could be reasonably concluded that the employee is properly classified. The Commission stated that terms such as "reasonable" and "unreasonable" are "legal terms of art" which cannot be defined without resorting to judicial interpretations. The Commission also stated that the "reasonable man standard" is used by the courts to make after-the-fact determinations concerning actions which were taken, and that since this term is subject to changing judicial interpretations, it would be impossible to include within the rules the standards which are used by the Commission and the Hearing Officers in making these determinations; therefore the Commission refused to include within the rules the standards used in making these discretionary determinations. The Commission's position, however, completely ignores the clear mandate, as well as the purpose and intent, of the Illinois Administrative Procedure Act provision which requires that agency's include standards for the exercise of discretionary powers.

In addition to the Commission's position concerning the term "reasonable," the Commission stated that summary judgment may be granted if the Director's submission does not set forth facts from which it could be reasonably concluded that the employee is properly classified. The Commission stated that, in fact, the Hearing Officer will propose summary judgment if the conditions mentioned in Section 11.02 are not met by the Director's submission but because Section 15.19 provides that parties are allowed to file written exceptions and legal arguments to a proposal for decision, summary judgment cannot be granted until these exceptions and arguments have been considered by the Commission. However, that response fails to focus on the real problem with the rule -- the fact that it fails to provide any standards for the exercise of the discretion of the Commission in granting or denying summary judgment. In addition, the Commission failed to indicate within this rule the Commission's policy to propose summary judgment subject to the Commission's review pursuant to Section 15.19.

- (c) Section 15.17 provides that if a party unreasonably refuses to comply with the rules or any order of the Commission or the Hearing Officer, the Hearing Officer may enter an adverse finding, order, or decision "as may be necessary" to insure just disposition of the matter. In addition to the Commission's discussion of "reasonable," which is included in (a) above, the Commission explained that an unreasonable refusal to comply with the rules or any order of the Commission or Hearing Officer, and the sanction imposed for such refusal would depend upon the rule or order involved, and that the reasonableness of the refusal would be judged by a "reasonable prudent man" standard. The Commission refused to include within the rule the standards used in making these discretionary determinations.

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This rulemaking violates Section 4.02 of the Illinois Administrative Procedure Act because the rules fail to include the standards used by the Secretary in making discretionary determinations. Staff is aware that judicial interpretations of such terms as "reasonable" and "unreasonable" are numerous, however, more precise definitions than "reasonable" and "unreasonable" are possible, and are required in order to fully inform those affected by the rule of the standards by which the agency shall exercise the discretionary powers. The fact that such "legal terms of art" are constantly changing does not preclude the Commission from including the current interpretations within these rules. Inclusion of the standards used in making these determinations would not permanently bind the Commission to retain outdated interpretations. Should the interpretation of these "legal terms of art" change, the Commission could change the rule through the general rulemaking provisions of Section 5.01, the emergency rulemaking provisions of Section 5.02, or the peremptory rulemaking provisions of Section 5.03 of the Illinois Administrative Procedure Act. Additionally, the fact that these "legal terms of art" are constantly being interpreted by the courts appears to indicate the necessity for more precisely defined standards within the rules in order that those affected by the rules will be fully informed by the applicable standards used in making discretionary determinations.

Date Agency Response Received: December 27, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

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Rules of the Merit Commission

Initial Publication in Illinois Register: September 9, 1983

Date Second Notice Received: October 25, 1983

Joint Committee Objection: November 17, 1983

Specific Objection:

The Joint Committee objects to Section 15.06(1) of the Secretary of State's "Rules of the Merit Commission" because the proposed rulemaking fails to include the standards used by the Commission and Hearing Officers in making discretionary determinations.

Section 15.06(1) provides that the Commission or Hearing Officer "may, at its discretion, for good cause shown, on timely motion, after notice to the opposite party, extend the

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time for filing any pleading or documents or may continue the date of a scheduled hearing for a limited period."

The Commission was asked to state and include within rule the standards used by the Commission or Hearing Officer in determining when an extension or a continuance shall be granted, whether "good cause" has been shown, when a continuance shall be granted, and what period of time constitutes a "limited" period.

The Commission explained that all of the terms included within Section 15.06(1) are "legal terms of art" which are recognized by the courts, and that it is impossible to write a rule outlining the standards used by the Commission and Hearing Officer in making these discretionary determinations. The Commission also explained that the continuance granted is not general but "limited" because it is granted for a specific period of time which varies depending upon the schedules of the Hearing Officer, the parties, and their attorneys, and the "good cause" shown for the continuance.

Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004.02) requires that each rule which implements a discretionary power to be exercised by an agency must include the standards by which the agency shall exercise that power. Section 4.02 also requires that such standards shall be stated as precisely and clearly as practicable under the conditions, in order to fully inform those persons affected by the rule.

This rulemaking violates Section 4.02 of the Illinois Administrative Procedure Act because the Commission has attempted to create discretionary powers to be exercised by the Commission and Hearing Officers without including within the rules the standards and criteria to be used in the exercise of that discretion. The fact that these phrases are "terms of art" which courts periodically interpret does not deter from the fact that these phrases grant discretionary powers to the Commissioners and Hearing Officers without providing any guidance as to the exercise of these discretionary powers, in violation of Section 4.02. Furthermore, this rulemaking violates Section 4.02 because those persons affected by the rule are not apprised of the standards used by Commission and Hearing Officers in making these discretionary determinations. Additionally, the fact that courts are constantly called upon to interpret these terms indicates that the judicial interpretations have not completely clarified these "legal terms of art" for those who might be affected by these rules. Therefore, standards are necessary in order to fully inform those persons affected by the rule.

Date Agency Response Received: December 27, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

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Publication as Adopted in the Illinois Register: December 30, 1983

Effective Date: January 1, 1984

Miscellaneous Agencies

ILLINOIS COMMERCE COMMISSION

Rule 10 of General Order 172, Second Revised, Rules Establishing
Procedures for Gas, Electric, Water, and Sanitary Sewer Utilities
Governing Eligibility for Service, Deposits, Payment Practices and
Discontinuance of Service

Initial Publication in Illinois Register: August 6, 1982

Date Second Notice Received: June 20, 1983

Joint Committee Objection: July 12, 1983

Specific Objection:

The final sentence of the first paragraph of Rule 10 states, "No customer shall be liable for unbilled or misbilled service after expiration of the applicable period except in those instances to which General Orders 24, 159 and 161 or the following paragraphs of the Rule apply." The Commission indicated that these General Orders set forth standards of service by water, gas, and electric utilities and that they contain rules which permit utilities to inspect and maintain property in a systematic manner which provide utilities with the basic mechanisms for discovery of errors. Furthermore, these General Orders provide a limited billing period when incorrect billing has occurred due to meter error.

The Commission was asked to clarify, within the rules, those parts of the General Orders which would remove the one or two-year time limit on back-billing. The Commission explained that Rule 14 of General Order 159 and Rule 16 of General Order 161, which outlined requirements governing the adjustment of bills for meter errors, were the specific provisions which applied to back-billing. The Commission also stated that General Order 24 deals with standards of service for water utilities but contains no specific rule dealing with back-billing. When the Commission was asked to include specific references within the rulemaking, the Commission declined. The Commission stated as its reason for refusing to insert such references that Rule 10 is a much-used rule and, since the language has not caused problems, it prefers to avoid changing the rule.

The Joint Committee appreciates the Commission's concerns regarding its reluctance to amend the rulemaking; however the Joint Committee feels that the lack of references to specific

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rules of the Commission's General Orders inadequately limits the Commission's application of this rule in that it fails to adequately inform the affected parties of the specific provisions which may vary the one or two-year back-billing limits. Additionally, each of the General Orders cited is lengthy and contain more than twenty separate rules, thus making it difficult for the affected consumer to determine the relevant and applicable provisions. Furthermore, the Commission's inability to provide a citation to any specific rule within General Order 24 dealing with back-billing leads the Joint Committee to question whether a citation to this General Order should be included within the rulemaking. It appears that the Commission could readily inform the affected public of the rules and remedy the objection by agreeing to insert references to the applicable provisions within the proposed rulemaking.

Therefore, the Joint Committee objects to Rule 10 of General Order 172 because it fails to adequately inform the affected public of the specific rules within the cited General Orders which may allow customers to be billed after the expiration of the time limits set in this rulemaking.

Date Agency Response Received: July 20, 1983

Nature of Agency Response: Modified to Meet Objection

Publication as Adopted in the Illinois Register: August 5, 1983

Effective Date: July 22, 1983

Rule 10 of General Order 172, Second Revised, Rules Establishing Procedures for Gas, Electric, Water, and Sanitary Sewer Utilities Governing Eligibility for Service, Deposits, Payment Practices and Discontinuance of Service

Initial Publication in Illinois Register: August 6, 1982

Date Second Notice Received: June 20, 1983

Joint Committee Objection: July 12, 1983

Specific Objection:

Rule 10 of General Order 172 deals with unbilled service. This rulemaking establishes, as a general rule, that residential customers must be billed for utilities within one year of the date of service, while non-residential customers must be billed within a two-year period. With the exception of three other Commission Orders (24, 159, and 161) no customer is liable for unbilled service except as provided in Rule 10.

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The second paragraph of Rule 10 outlines the exceptions to the general rule. This paragraph, in part, states:

When a utility proves that there has been tampering with wires, pipes, meters or other service equipment and proves that the customer enjoyed the benefit of such tampering, the utility is not restricted to the above time limitation on unbilled service.

The Commission was asked if the utility must prove to the Commission that customers have tampered with and benefitted from the tampering with wires, pipes, and meters. Furthermore, the Commission was asked to explain the process for proving these accusations to the Commission. The Commission explained that this process begins when the utility feels that there has been a tampering or diversion for which the customer owes money. The utility would submit a bill to the customer in such cases. If the customer disputed the bill, and the parties cannot resolve the dispute, then the Commission would become involved. The Commission explained that such a situation would be a "contested case" subject to the Commission's contested case hearing rules. The Commission was asked to reflect this policy within the rules; however, the Commission declined.

Section 7.04 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1007.04) provides in part, that one of the functions of the Joint Committee is the "promotion of adequate and proper rules by agencies." It appears that this rulemaking is not accurate and current because the rulemaking implies that the matter of proof is a condition precedent to the billing at issue. The actual procedure of "proof" does not occur before the billing takes place. While not explicit in the rule, the position of the Commission is that the utility is not required to "prove" anything until the customer disputes the bill or complains to the Commission either formally or informally. Hence, this implication is not the policy of the Commission, and therefore the rule fails to accurately reflect the Commission's current policy.

Additionally, the Commission was asked to delineate the standards used by the Commission in determining whether the "proof" given by the utility was adequate. The Commission explained that standards used by the Commission to decide a "contested case" would be the standard of "preponderance of evidence." When the Commission was asked to reflect within the rules the standards used by the Commission in determining whether the utility has "proved" that a customer has tampered with wires, pipes or meters, the Commission declined. The Commission stated that this is a much-used rule and, since the language does not appear to have caused problems, it prefers to avoid changing the rule.

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Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004.02) requires that each rule which implements a discretionary power to be exercised by an agency must include the standards by which the agency shall exercise that power. This section also requires that such standards shall be stated as precisely and clearly as practical under the conditions, in order to fully inform those persons affected by the rule. The Commission has attempted to create discretionary powers in the rule without including the standards and criteria by which it exercises that power.

This rule violates Section 4.02 of the Illinois Administrative Procedure Act because this rule fails to state the standards used by the Commission in determining whether the utility has "proved" that a customer has tampered with wires, pipes or meters. The Commission's failure to specifically state in the rule the standards used by the Commission in making these discretionary determinations violates Section 4.02 of the IAPA in that the rule fails to specifically state such standards and because those persons affected by the rule are not apprised of the standards used by the Commission. The inclusion of standards within the rule would remedy this objection; nonetheless the Commission has declined to insert such standards within the rule.

Therefore, the Joint Committee objects to Rule 10 because the rule fails to accurately present the policy of the Commission, and fails to include the standards used by the Commission in determining whether the utility has "proved" that a customer has tampered with wires, pipes or meters.

Date Agency Response Received: July 20, 1983

Nature of Agency Response: Modified to Meet Objection

Publication as Adopted in the Illinois Register: August 5, 1983

Effective Date: July 22, 1983

STATE BOARD OF ELECTIONS

Approved Voting Systems (26 Ill. Adm. Code 204.10)

Initial Publication in Illinois Register: May 20, 1983

Date Second Notice Received: July 18, 1983

Joint Committee Objection: August 18, 1983

Specific Objection:

Proposed Section 204.10 of the Rules of the State Board of Elections states that "Voting systems currently approved for

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use in the State of Illinois shall be identified on a list to be maintained by the State Board of Elections." The list is currently part of the rules. This rulemaking would remove the list from the rules.

Section 3.09 of the Illinois Administrative Procedure Act defines "rule" as an "agency statement of general applicability that implements, applies, interprets or prescribes law or policy." The Board's list of approved voting systems appears to meet this statutory definition, for the list is the result of the implementation, application, and interpretation of the Board's approval policies, therefore, it should be promulgated as such pursuant to Section 3.09 of the Illinois Administrative Procedure Act.

The present rule lists the names, addresses, and dates of approval for the six voting systems which have been approved by the State Board of Elections for use in the State of Illinois. The most recent voting system approval occurred in 1975.

Staff requested that the Board explain why this list of currently approved voting systems should not remain on file as a rule pursuant to Section 3.09 of the Illinois Administrative Procedure Act. The Board stated its opinion that the list is not a rule within the Section 3.09 definition, but is merely the result of the procedures used by the Board to approve voting systems. However, the Board explained that the present rule cannot be kept current because the rulemaking process takes approximately three months to complete. In addition, the Board explained that while the proposed rule does not include a list of approved voting systems, it does include the location of the list, which would improve public access to the list and allow it to be automatically updated as changes were made. The Board stated that this list would be available for public inspection and copying during regular business hours at the State Board of Elections offices in Springfield and Chicago. The Board indicated a willingness to include these policies within the rule.

The proposed rulemaking is an attempt to circumvent the requirements of the IAPA (Sections 3.09, 4(c), and 5.01) by allowing the Board to amend the approved list without informing the public of the change, and without subjecting the change to legislative oversight. It does not appear that the requirements of the Illinois Administrative Procedure Act greatly impede change of the list of approved voting systems, particularly since the most recent approval occurred in 1975. When an immediate change is necessary, the emergency rulemaking provisions of the Act can be used.

The Joint Committee appreciates the willingness of the Board to include in the rulemaking its policies concerning the public availability of the lists of approved voting systems. However,

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this inclusion does not remedy the primary problems with this rule.

Therefore, the Joint Committee objects to this rulemaking on the basis that it violates Sections 3.09, 4(c), and 5.01 of the Illinois Administrative Procedure Act.

Date Agency Response Received: None

Nature of Agency Response: Failed to Respond

Publication as Adopted in the Illinois Register: Withdrawn

Effective Date: None

Declaratory Orders and Advisory Opinions, Part 10, Subpart 7

Initial Publication in Illinois Register: July 8, 1983

Date Second Notice Received: September 2, 1983

Joint Committee Objection: September 22, 1983

Specific Objection:

Section 701 of the proposed rulemaking concerns the issuance of advisory opinions. Advisory opinions are limited to specific facts and issues, and the Board will not issue opinions based upon general or hypothetical questions, nor upon the activities of third parties. The issuance of advisory opinions is further limited by Section 701(b)(2) which provides: "Advisory opinions shall be limited to those issues which are deemed to be of significant overall importance in the implementation and enforcement of the Election Laws. Issuance of any advisory opinion shall at all times be discretionary with the Board."

The Board was asked to include within Section 701(b)(2) the standards it used in deciding whether to issue advisory opinions. The Board stated that advisory opinions are only issued when the Board deems an issue to be of "significant overall importance." The Board may deem an issue to be significant if it had arisen previously without being resolved, or if it has general applicability, or if for some other reason the Board determined that the issue is important enough to merit attention. The Board expressed the need for the flexibility to make these determinations on a case-by-case basis, and therefore refused to include any standards within the rule.

Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004.02) requires that a rule which implements a discretionary power to be exercised by an agency include the standards by which that agency shall

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exercise the power. Section 4.02 also provides that such standards shall be stated as precisely and clearly as possible under the conditions in order to inform fully those persons affected by the rule. The Board has attempted to create discretionary powers in these rules without providing the standards and criteria which will be used in the exercise of that power. Therefore, the rule, as stated, does not fully inform those affected by the rule of the specific standards used by the Board in making such discretionary determinations. The Board has indicated the standards it uses in making these determinations. The inclusion of these standards within the rule would remedy this objection.

This rulemaking violates Section 4.02 because Section 701(b)(2) fails to specifically state the standards used by the Board in determining when advisory opinions will be issued. The Joint Committee objects to Section 701(b)(2) of the "Rules and Regulations of the State Board of Elections" because the proposed rulemaking fails to include the standards used by the Board in making discretionary determinations.

Date Agency Response Received: November 18, 1983

Nature of Agency Response: Modified to Meet the Objection

Publication as Adopted in the Illinois Register: November 28, 1983

Effective Date: November 9, 1983

Order of the Board; Civil Penalties, Part 10, Subpart 402

Initial Publication in Illinois Register: July 8, 1983

Date Second Notice Received: September 2, 1983

Joint Committee Objection: September 22, 1983

Specific Objection:

Section 402 of the proposed rulemaking outlines the procedures for Board review of the reports of the Hearing Examiner and the General Counsel. Section 402(a)(1) provides that: "Oral argument before the Board prior to issuance of a final order shall be permitted at the Board's discretion."

The Board was asked to include within Section 402(a)(1) the standards which are used by the Board in determining whether to permit oral argument before the Board prior to the issuance of the final order. The Board explained that the hearing before the Board is the third hearing in the hearing process, and that oral argument is allowed at each of the previous hearings. For this reason, the Board explained that oral testimony is only permitted before the Board prior to the

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issuance of a formal order in "exceptional cases." The Board further explained that oral argument would be permitted whenever the Board determines that the argument would provide additional information which would affect the outcome of the hearing. The Board refused to include such modifying language in the rule.

Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004.02) requires that a rule which implements a discretionary power to be exercised by an agency include the standards by which that agency shall exercise the power. Section 4.02 also provides that such standards shall be stated as precisely and clearly as possible under the conditions in order to inform fully those persons affected by the rule. The Board has attempted to create discretionary powers in these rules without providing the standards and criteria which will be used in the exercise of that power. Therefore, the rule, as stated, does not fully inform those affected by the rule of the specific standards used by the Board in making such discretionary determinations.

This rulemaking violates Section 4.02 because Section 402(a)(1) fails to specifically state the standards used by the Board in determining when oral argument before the Board prior to the issuance of the final order shall be permitted. The Joint Committee objects to Section 402(a)(1) of the "Rules and Regulations of the State Board of Elections" because the proposed rulemaking fails to include the standards used by the Board in making discretionary determinations.

Date Agency Response Received: November 18, 1983

Nature of Agency Response: Modified to Meet the Objection

Publication as Adopted in the Illinois Register: November 28, 1983

Effective Date: November 9, 1983

ENVIRONMENTAL PROTECTION AGENCY

Procurement Rules (44 Ill. Adm. Code 3500)

Initial Publication in Illinois Register: November 12, 1982

Date Second Notice Received: January 18, 1983

Joint Committee Objection: April 19, 1983

Specific Objection:

The Joint Committee objects to the Procurement Rules because the rules have not been approved as required by Section 5 of

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the Illinois Purchasing Act (Ill. Rev. Stat. 1981, ch. 127, par. 132.5).

Date Agency Response Received: July 13, 1983

Nature of Agency Response: Modified to Meet Objection

Publication as Adopted in the Illinois Register: October 21, 1983

Effective Date: November 4, 1983

OFFICE OF THE STATE FIRE MARSHAL

Policy and Procedures Manual for Fire Protection Personnel (41 Ill. Adm. Code 140)

Initial Publication in Illinois Register: October 8, 1982

Date Second Notice Received: December 23, 1983

Joint Committee Objection: February 23, 1983

Specific Objection:

The Joint Committee objects to Section 140.390 of the proposed rulemaking because Section 140.390 is not a rule as defined in Section 3.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1003.09).

Date Agency Response Received: March 15, 1983

Nature of Agency Response: Withdrew to Meet Objection

Publication as Adopted in the Illinois Register: October 7, 1983

Effective Date: September 23, 1983

Rules and Regulations Relating to General Storage (41 Ill. Adm. Code 160)

Initial Publication in Illinois Register: March 11, 1983

Date Second Notice Received: October 4, 1983

Joint Committee Objection: November 17, 1983

Specific Objection:

The Joint Committee objects to Sections 160.510(b) and (c) of the Office of the State Fire Marshal's "Rules and Regulations Relating to General Storage" because the Office lacks the statutory authority to promulgate rules governing the

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dismantling of abandoned bulk plants and because Section 160.510 fails to include Agency policy.

Section 160.510 sets forth provisions governing the operation and dismantling of abandoned bulk plants. Section 160.150 states:

Section 160.510 ABANDONED BULK PLANTS

- a) If a bulk plant is closed for a period of twenty-four (24) months, the owner shall either put the plant back into operation or remove all petroleum [sic] products and properly secure the site for possible future use.
- b) If after five years from date of original closing said bulk plant is not restored to operation it shall be dismantled and the equipment removed.
- c) Such dismantling and removal shall be completed within 90 days.

When the Office was asked its specific statutory authority for promulgating rules which outline dismantling procedures for abandoned bulk plants (Sections 160.510 (b) and (c)), the Office admitted that it has no specific statutory authority. The Office explained that it relies on Section 2 of "An Act to regulate the storage, transportation, sale and use of gasoline and volatile oils" which in part, states, "[t]he Office of the State Fire Marshal has [the] power to make and adopt reasonable rules and regulations governing the keeping, storage, transportation, sale or use of gasoline and volatile oils" to promulgate this rule. The Joint Committee questioned whether this statutory grant of authority includes the power to promulgate rules governing the dismantling of abandoned bulk plants, in view of the fact that an abandoned plant will not be keeping or storing any gasoline or oil in its tanks. The Office contends that it is required to make decisions balancing the public safety against individual property rights as part of the process of regulating the storage of volatile liquids. In exercising this authority, the Office stated, it has determined that rules governing the operation and dismantling of abandoned bulk plants are advisable because certain amounts of potentially dangerous liquid and fumes will, as a practical matter, always be present at an unused bulk plant. Nonetheless, it is obvious from a reading of the language of the statute that it is directed at active plants and not closed and abandoned plants.

The Office was also asked if it had further policy relating to the dismantling of abandoned bulk plants. The Office explained that it has not completely formulated its policy

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covering all aspects of the dismantling operation but that its general policy is to consider a bulk plant to be "dismantled" if all the plant's storage tanks have been torn down, cut in two, had numerous holes cut in them, or been crushed with a crane. This policy is obviously significant, since there is likely to be a considerable cost difference between completely tearing down a plant and merely cutting a tank in two or putting holes in it. When asked that this policy be inserted into the rule, the Office declined to do so, stating that it might amend the rule at some time in the future.

The Office's arguments are unpersuasive. Bulk plants, like other property, belong to owners who have a right to use them within wide limits, unless the use is one specifically prohibited by statute. Clearly, the Office retains the authority to regulate any bulk plant which stores either gasoline or volatile oils. However, there appears, in the absence of a positive individual finding of fire or explosion hazard, an unbridgeable gap between this power to regulate and the power to promulgate rules governing the dismantling of abandoned bulk plants. Despite the practical considerations cited by the Office in support of its position, it appears the Office has only the statutory authority to regulate storage, transportation and sale of liquids and that this authority does not include power to promulgate rules governing the dismantling of abandoned bulk plants.

Furthermore, Section 7.04 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1007.04) provides that one of the functions of the Joint Committee is the "promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules." The proposed rulemaking, as it now exists, violates Section 7.04 of the IAPA in that the rulemaking does not promote an understanding on the part of the public respecting such rules because the Office has failed to include its policy governing the dismantling of bulk plants within its rulemaking.

In the absence of any explicit or implicit statutory authority, it appears that the Office is not authorized to promulgate rules governing the dismantling of abandoned bulk plants. In view of the fact that the proposed section was promulgated for the purpose of protecting the public's safety, it appears that there may be some merit in the argument that there is a need for such rules. However, this appears to be a matter of policy to be properly considered by the General Assembly.

For the preceding reasons, the Joint Committee objects to Sections 160.510(b) and (c) because the State Fire Marshal lacks the statutory authority to promulgate rules governing the dismantling of abandoned bulk plants and because Section 160.510 fails to include agency policy.

Date Agency Response Received: Pending

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Nature of Agency Response: Pending

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

Rules and Regulations Relating to Service Stations (41 Ill. Adm. Code 170)

Initial Publication in Illinois Register: March 4, 1983

Date Second Notice Received: October 20, 1983

Joint Committee Objection: November 17, 1983

Specific Objection:

The Joint Committee objects to Section 170.76(c)(3) of the Office of the State Fire Marshal's "Rules and Regulations Relating to Service Stations" because the Office lacks the specific statutory authority to require tank repair firms to file a certificate of insurance with the Office.

Section 170.76 is entitled "Leaking Underground Tanks," and states when a tank is determined to be leaking, it can be removed, replaced or repaired. Section 170.76(c) delineates rules governing the repair of underground tanks and provides that existing underground tanks may be glass or epoxy-lined, provided that certain conditions for repairs are met. These certain conditions are outlined within Section 170.76(c) with Section 170.76(c)(3) stating, "Any firm proposing such a repair shall have on file, with the State Fire Marshal, a certificate of insurance."

The Office was asked its specific statutory authority for requiring a tank repair firm to have a certificate of insurance on file with the State Fire Marshal. The Office replied that it had no specific statutory authority for the provision but relied on its general authority set forth in Section 2 of "An Act to regulate the storage, transportation, sale and use of gasoline and volatile oils" (Ill. Rev. Stat. 1981, ch. 127½, par. 154) which states in part, "[t]he Office of the State Fire Marshal has [the] power to make and adopt reasonable rules and regulations governing the keeping, storage, transportation, sale or use of gasoline and volatile oils." The Office asserted that this regulation concerns the "storage," "keeping" and "sale" of "gasoline and volatile oils" and is a reasonable exercise of its rulemaking power for the purpose of protecting the public's safety and tank owners from unqualified repairers who cannot obtain insurance. The Office further stated that firms have traditionally filed such certificates with the Office, and that it has not received any negative comments pursuant to this newly proposed requirement.

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Section 2 of "An Act to regulate the storage, transportation, sale and use of gasoline and volatile oils" does not, explicitly or implicitly, grant the Office the authority to promulgate rules requiring tank repair firms to file a certificate of insurance with the Office. It appears that the Office's assertion that this provision is a reasonable exercise of its rulemaking power and is needed for the purpose of protecting the public, is without merit. Rather, the major thrust of the proposed rule appears to be to protect the interest of the tank owner from possible financial loss. While the protection from financial loss is important, this appears to be a matter within the responsibility of the tank owner, and not within the authority of the State Fire Marshal to regulate. Certainly the question of whether or not a tank repairer is insured is at the very best only tangentially related to the question of whether the volatile liquids are being stored safely. Hence, the proposed rule appears to stretch the statutory grant of rulemaking authority beyond that which was reasonably intended by the General Assembly.

In the absence of any explicit or implicit statutory authority, it appears that the Office is not authorized to promulgate this rule. In view of the fact that the proposed rule was promulgated for the purpose of protecting the public's safety, and that firms have traditionally filed such certificates with the Office, it appears that there may be a need for such a rule. However, this appears to be a matter of policy to be properly considered by the General Assembly.

For the preceding reasons, the Joint Committee objects to Section 170.76(c)(3) because the Office of the State Fire Marshal lacks the specific statutory authority to require tank repair firms to file insurance certificates with the Office.

Date Agency Response Received: Pending

Nature of Agency Response: Pending

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

ILLINOIS INDUSTRIAL COMMISSION

Rules Governing Practice Before the Industrial Commission; Rule
4-(7)(C)
[Emergency]

Initial Publication in Illinois Register: December 17, 1982

Joint Committee Objection: January 25, 1983

Specific Objection:

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Emergency Rule 4-(7)(C) specifies that in appeals before the Industrial Commission the appealing party's summary of the case, and/or brief/abstract must be filed not less than 15 days prior to the date of oral argument. The rule further specifies the means by which compliance with the rule may be shown (e.g., Commission date stamp, postmark, or registered mail receipt).

The Joint Committee objects to Emergency Rule 4-(7)(C) on the grounds that there is no "threat to the public interest, safety or welfare" justifying the use of emergency rulemaking powers.

Date Agency Response Received: None

Nature of Agency Response: Refusal

Effective Date: December 7, 1982

STATE BOARD OF INVESTMENT

Employees' Deferred Compensation Plan

Initial Publication in Illinois Register: March 18, 1983

Date Second Notice Received: May 13, 1983

Joint Committee Objection: July 12, 1983

Specific Objection:

Section 2700.670(c) provides that:

The Board is specifically authorized to invest any Fund on behalf of the State of Illinois and to utilize outside investment managers to the extent deemed appropriate by the Board. (Emphasis added)

The Board was asked to explain how and under what circumstances outside investment managers were selected. The Board explained, in preliminary discussions, that it does not presently use the services of any outside investment managers, nor has it ever done so, because the selection of an investment fund includes, as an intrinsic part thereof, the services of investment managers. The Board indicated that this section is designed for the future possibility that the Board would decide to operate an investment fund. Such a possibility, the Board stated, is extremely remote. When the Board was asked to delete this rule because it does not reflect current policy, the Board indicated that this provision was necessary in case a need arose for the use of outside investment managers in the future. In testimony before the Joint Committee, however, the Board indicated that in some

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cases it does indeed use the services of outside investment managers.

Section 7.04 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1007.04) provides in part that one of the functions of the Joint Committee is the "promotion of adequate and proper rules by agencies." It appears that the Section 2700.670(c) may not be an accurate and current reflection of the Board's policy, if outside investment managers are not presently used, and their use in the foreseeable future is not contemplated.

The Board was also asked to state the discretionary standards used in making the determination of the "appropriateness" of the use of outside investment managers. The Board stated that one of the standards used to determine "appropriateness" is the cost effectiveness of employment of outside managers as opposed to in-house management. When asked to insert such standard within the rule, the Board stated that the inclusion of standards would reduce its flexibility in the utilization of outside investment managers if and when the need for their use ever arose. The Board further argued that the legislature imposed a limitation on the Board's authority to employ advisory investment sources for the pension fund and retirement system, but that no similar statutory limitation was imposed for the selection of outside investment managers for the Employees' Deferred Compensation Plan. Therefore, the Board believes that the legislature intended the Board to have a great deal of discretion in making this determination.

Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004.02) requires that each rule which implements a discretionary power to be exercised by an agency include the standards by which the agency shall exercise the power. This section also provides that such standards shall be stated as precisely and clearly as practicable under the conditions, in order to inform fully those persons affected by the rule. It appears that inclusion of cost effectiveness and other standards which the Board will use in making this discretionary determination would remedy this objection; however, the Board has declined to include such standards. The Board's failure to specifically state in the rule the standards used by the Board to determine when the utilization of outside investment managers "is deemed appropriate" violates Section 4.02 of the Illinois Administrative Procedure Act in that the rule fails to specifically state such standards and because those persons affected by the rule (the Plan participants) are not advised of the standards used by the Board.

Therefore, the Joint Committee objects to the rule on the basis that the rulemaking fails to include the standards used by the Board to determine when the employment of outside investment

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managers would be deemed appropriate and because the rulemaking does not accurately reflect current Board policy.

Date Agency Response Received: August 25, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: September 2, 1983

Effective Date: August 31, 1983

Employees' Deferred Compensation Plan

Initial Publication in Illinois Register: March 18, 1983

Date Second Notice Received: May 13, 1983

Joint Committee Objection: July 12, 1983

Specific Objection:

Section 2700.630(b), which deals with the administrative costs of the Plan, states:

The method of sharing any expenses and the amount of such expenses shall be determined by the Department subject to the approval of the Board. (Emphasis added)

Section 2700.630(c) provides that administrative charges under the Plan "shall be set by administrative rule."

Section 2700.640(c), which outlines the method of making investment requests, provides in part that the Board may restrict changes of investment requests in any particular or all investment funds.

Administrative Rule 2 provides that an asset charge not to exceed one percent will be levied against the account of each participant to offset the administrative costs of the Plan.

The Board was asked to state the standards it used in: 1) deciding to approve the method of sharing administrative expenses and the amount such expenses, and 2) restricting changes in investment requests in any particular or all investment funds. The Board explained that it imposes an asset charge on the account of each participant as a method of sharing expenses, and that the charge is set to cover the costs of the Plan. The current asset charge is three-quarters of one percent. This asset charge is adjusted whenever the costs of the Plan changes. The Board further stated that, although restrictions and charges are imposed by Administrative Rule 3 for changes in investment requests, the

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Board does not presently restrict changes in investment requests in any particular or all investment funds, but might do so in the future.

The Board declined to insert the standards used in making these determinations. The Board also indicated that the policies are included in Administrative Rule 2. That Rule sets an asset charge ceiling of one percent, but does not state the current asset charge of three-quarters of one percent, or include any other standards regarding the other discretionary authority alluded to above.

Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004.02) requires that each rule which implements a discretionary power to be exercised by an agency include the standards by which the agency shall exercise that power. The section also provides that such standards shall be stated as precisely and clearly as practicable under the conditions, in order to inform fully those persons affected by the rule. The Board has attempted to create discretionary powers in these rules without providing the standards and criteria which will be used in the exercise of that power.

This rulemaking violates Section 4.02 because the rules fail to specifically state the standards used in making discretionary determinations and therefore, those persons affected by the rules are not apprised of the standards used by the Board. The rulemaking does not state the standards used by the board in deciding to approve the method of sharing expenses and the amount of such expenses, nor does it include the standards used to determine restrictions on investment requests. Additionally, the administrative charges have not been set by administrative rule, despite the ceiling imposed in Administrative Rule 2.

Therefore, the Joint Committee objects to Sections 2700.630(b), and 2700.640(c), and Administrative Rule 2 because the proposed rulemaking fails to include the standards used by the Board in making discretionary determinations.

Date Agency Response Received: August 25, 1983

Nature of Agency Response: Partial Modification/Partial Refusal

Publication as Adopted in the Illinois Register: September 2, 1983

Effective Date: August 31, 1983

Employees' Deferred Compensation Plan

Initial Publication in Illinois Register: March 18, 1983

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Date Second Notice Received: May 13, 1983

Joint Committee Objection: July 12, 1983

Specific Objection:

Section 2700.310(a)(4) provides that:

The Board has the responsibility for general supervision of the Plan which shall include, but not be limited to:

reviewing any and all proposed investment offerings, each of which must be determined acceptable by the Board prior to being utilized for the investment of Deferred Compensation. (Emphasis added)

Section 2700.310(b) provides that:

Following approval by the Board of one or more types of investments, if any, to be offered to Participants, the Board shall prepare specifications and make them available to known administrators or providers of that type of investment. (Emphasis added)

Section 2700.670(a) provides that: "The Board may establish any or all of the following Funds for the investment of Deferred Compensation" The rule then establishes four types of investment funds "which shall be invested by the Board, at the Board's discretion." (Emphasis added)

Section 2700.670(b) provides that: "The Board may establish more than one Investment Fund for each category described above if deemed appropriate." (Emphasis added)

Section 2700.670(d) provides, in part, that: "The Board also has the authority to eliminate any or all of the Investment Funds created by the Plan. . . ." (Emphasis added)

The Board was asked to provide the standards used in making these discretionary determinations. The Board stated it is only required to act "in a fiduciary capacity" with respect to the Plan. The Board indicated a willingness to insert a reference to its "fiduciary duty" within these sections. The Board was asked to further define "fiduciary duty" or to include examples of the most common duties which are include in the term "fiduciary duty" within these sections. The Board declined. The Board contends that the "fiduciary duty" criteria are constantly changing due to continuous litigation on

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the issue, and the term refers to a specific, expanding body of case law which delineates the standards.

Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004.02) requires that each rule which implements a discretionary power include the standards by which the agency shall exercise the power. Section 4.02 also provides that such standards shall be stated as precisely and clearly as practicable under the conditions, in order to fully inform persons affected by the rule.

The Board believes that the inclusion of a reference to "fiduciary duty" states the standards as precisely and clearly as practicable under the conditions. The Joint Committee disagrees. The Joint Committee is of the belief that the inclusion of a reference to "fiduciary duty" within these rules fails to meet the requirements of Section 4.02 in that such standards are not being stated as precisely and clearly as practicable under the conditions. The mere inclusion of a reference to the Board's fiduciary duty fails to adequately inform those persons affected by this rulemaking (State employees, Judges and Members of the Illinois General Assembly) of the specific standards used by the Board in making these discretionary determinations. Additionally, the fact that the responsibilities required by one acting in a fiduciary capacity have been the subject of extensive litigation indicates that the inclusion of a reference to "fiduciary duty" within these rules would add little, if any, additional meaning to these rules.

Therefore the Joint Committee objects to Sections 2700.310(a)(4), 2700.310(b), 2700.670(a), 2700.670(b), and 2700.670(d) of the State Board of Investment's "Employees' Deferred Compensation Plan" on the basis that the rulemaking fails to include the standards used by the Board to make discretionary determinations.

Date Agency Response Received: August 25, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: September 2, 1983

Effective Date: August 31, 1983

POLLUTION CONTROL BOARD

Alternative Control Strategies, Chapter 2: Air Pollution, Final Rule;
R81-20

Initial Publication in Illinois Register: July 30, 1982

Date Second Notice Received: December 10, 1982

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Joint Committee Objection: January 25, 1983

Specific Objection:

This rulemaking represents the Pollution Control Board's final rulemaking regarding Alternative Control Strategies (the "bubble" rule) to meet the statutory requirements of Section 9.3(c) of the Environmental Protection Act (Ill. Rev. Stat. 1981, ch. 111½, par 1009.3(c)).

The Joint Committee objects to this rulemaking because the rulemaking violates Section 27(b) of the Environmental Protection Act, which requires the Board, prior to adoption of a rule, to conduct hearings on the economic impact of a rule and to receive comments on the Department of Energy and Natural Resources' Economic Impact Study, which has not been completed.

Date Agency Response Received: April 26, 1983

Nature of Agency Response: Modified to Meet Objection

Publication as Adopted in the Illinois Register: July 8, 1983

Effective Date: June 27, 1983

Non-Attainment Area Permit Regulations
[Emergency]

Initial Publication in Illinois Register: November 19, 1982

Joint Committee Objection: January 25, 1983

Specific Objection:

This emergency rulemaking extends the operation of the identical interim Pollution Control Board rule adopted February 16, 1982, and which expired October 1, 1982, in order to provide consistent regulations to allow new sources in the State's non-attainment areas to obtain permits while the final regulatory process is completed.

The Joint Committee objects to this emergency rulemaking as in violation of Section 5.02 of the Illinois Administrative Procedure Act, which prohibits the adoption of two or more identical emergency rules within a 24 month period, because the Illinois Environmental Protection Agency adopted an emergency rule with substantially the same purpose and effect on August 26, 1981.

Date Agency Response Received: None

Nature of Agency Response: Refusal to Modify or Withdraw

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Effective Date: November 4, 1982

Educational Agencies

STATE BOARD OF EDUCATION

Rules and Regulations to Govern the Administration and Operation of
Special Education
[Emergency]

Initial Publication in Illinois Register: May 20, 1983

Joint Committee Objection: June 14, 1983

Specific Objection:

Section 14-8.02 of the School Code establishes special education due process procedures which include a local level hearing before an impartial hearing officer, and an appeal to the State Board. Subsection (i) concerns the appeal to the State Board and states:

No later than 30 days after perfection of the appeal by receipt of the record on appeal a final decision shall be reached and a copy mailed to each of the parties. A reviewing officer may grant specific extensions of time beyond the 30-day deadline at the request of either party or if a hearing is convened at the State level.

Subsection (g) of Section 14-8.02 requires that the record on appeal be transcribed by the local district and submitted to the Board within 28 days of receipt of the request for appeal.

Emergency Rule 10.21 restates that the statutory requirement that a final decision be issued within 30 days of perfection of the appeal. Perfection of appeal is defined, in Emergency Rule 10.17, as the date when the local hearing transcript and any written arguments from the parties are received by the State Board. Emergency Rule 10.17 reiterates the statutory 28 day period for submitting the written transcript, but also creates two new 10 day periods which are prerequisites to perfection. The first 10 day period is to allow the parties to record inaccuracies in the transcript and for the appealing party to submit written arguments and new evidence. The second 10 day period is to allow the opposing party to respond to the new arguments.

Emergency Rule 10.17 conflicts with Section 14-8.02(i) of the School Code in that it extends the date of perfection beyond the date when the transcript is received. While the statute does allow the reviewing officer to grant specific extensions to

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the 30 day decision deadline at the request of either party, it does not authorize the automatic 10 day extensions provided in Emergency Rule 10.17 which, in effect, extend the 30 day period.

The Board argues that the two 10 day periods are actually beneficial to the parties because they allow the parties to review the transcript for inaccuracies, and to make additional arguments and counterarguments based on the transcript. While the Board recognizes that Section 14-8.02 of the School Code allows the hearing officer to grant extensions, it prefers to automatically grant the 10 day periods before the appeal is perfected. The Board believes this is more efficient because after the appeal is perfected one party is likely to object to the other party's request for a continuance. Because both parties are often not simultaneously before the Board, this can require a lot of timeconsuming letter writing between the Board and the parties.

While the Board's position may have some practical merit, it is clear that the two 10 day periods in Emergency Rule 10.17 violate Section 14-8.02(i) of the School Code. The statute unambiguously states that the appeal is perfected when the record on appeal is received and establishes a specific 28 day period for the record on appeal to be submitted to the Board. Because it violates Section 14.8.02(i) of the School Code, the Joint Committee objects to Emergency Rule 10.17.

Date Agency Response Received: August 8, 1983

Nature of Agency Response: Modified to Meet Objection

Effective Date: May 6, 1983

Rules and Regulations to Govern the Administration and Operation of
Special Education
[Emergency]

Initial Publication in Illinois Register: May 20, 1983

Joint Committee Objection: June 14, 1983

Specific Objection:

Section 14-7.02 of the School Code states, in part:

The State Board of Education shall promulgate rules and regulations for determining when placement in a private special education facility is appropriate In developing these rules and regulations the State Board of Education shall consult with the Advisory Council on

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Education of Handicapped Children and hold public hearings to secure recommendations from parents, school personnel, and others concerned about this matter.

Emergency Rule 8.11 establishes standards for when placement in a private special education facility is appropriate and, therefore, should have been preceded by a public hearing. The Board explained that it did not hold a public hearing, but intends to hold one on the identical proposed rulemaking which was published in the May 27, 1983 Illinois Register. The Board has adopted this approach to avoid the possible necessity of holding two public hearings. This could have occurred if the Board had held a public hearing on the emergency rulemaking, and then was required to hold a public hearing on the proposed rulemaking under Section 5.01(a)(5) of the Illinois Administrative Procedure Act.

While it may be desirable for the Board to avoid the costs of two public hearings on the same rulemaking, the failure to hold a public hearing prior to the adoption of Emergency Rule 8.11 clearly conflicts with Section 14-7.02 of the School Code, which makes no exceptions for emergency rules. For that reason, the Joint Committee objects to Emergency Rule 8.11.

Date Agency Response Received: August 8, 1983

Nature of Agency Response: May 20, 1983

Effective Date: May 6, 1983

Rules and Regulations to Govern the Administration and Operation of
Special Education
[Emergency]

Initial Publication in Illinois Register: May 20, 1983

Joint Committee Objection: June 14, 1983

Specific Objection:

Section 5.02 of the Illinois Administrative Procedure Act enables an agency to avoid the general rulemaking requirements in Section 5.01 of the Act, if the agency finds that an "emergency" exists. "Emergency" is defined as "the existence of any situation which any agency finds reasonably constitutes a threat to the public interest, safety or welfare."

The Board staff indicated that there actually may have been no immediately foreseeable threat to the public interest, safety or welfare when these emergency rules were adopted. It may be, however, that in view of the legislative history, a finding that

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a condition existed that warranted emergency adoption of these rules could be supported.

What is clear, however, is that any emergency that did exist was an agency-created emergency. The bills which authorized these rules (P.A. 82-456 and 82-720) were effective 18 and 20 months, respectively, prior to this rulemaking. In fact, it appears that the emergency rulemaking process may have been used precisely to make up for the Board's delay in developing these rules.

Because any emergency that may have existed was a result of delay caused by the Board in drafting and filing of these rules, the Joint Committee objects to these emergency rules.

Date Agency Response Received: August 8, 1983

Nature of Agency Response: Modified to Meet Objection

Effective Date: May 6, 1983

ILLINOIS STATE SCHOLARSHIP COMMISSION

Rules 4.03, 4.06, and 4.18 of Article IV
[Emergency]

Initial Publication in Illinois Register: August 19, 1983

Joint Committee Objection: October 26, 1983

Specific Objection:

The Joint Committee objects to the emergency amendments to Rules 4.03, 4.06 and 4.18 because there did not exist an emergency as required by section 5.02 of the Illinois Administrative Procedure Act, and because any emergency that does exist, is the result of the Illinois State Scholarship Commission's failure to promulgate this rulemaking in a timely manner, in accordance with the procedures required by Section 5.01 of the Illinois Administrative Procedure Act.

Rule 4.03 contained the Illinois State Scholarship Commission's requirement that, in a two-parent family, the major wage earner of the two must either be the maker or co-maker of any loan made under the Parent Loan Program (PLUS). The amendment would suspend that requirement if the secondary earner would be eligible for credit in his/her own right. Rule 4.18 would make the one borrower/one lender rule applicable only within each of the three loan programs, IGLP, PLUS and ALAS. These rules were amended in response to comments from lending institutions that, without such amendments, those institutions would not participate in the PLUS or ALAS loan programs. The Commission indicated that it was aware of

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these problems as early as December, 1982, with respect to Rule 4.03, and as early as April, 1983 regarding Rule 4.18. Because the 1983-84 academic year began in August for many schools, the Commission filed these amendments as emergency rules so that more students could take advantage of the loan programs this year.

The emergency amendment to Rule 4.06 clarifies the Commission's override policy which is applicable to the Illinois Guaranteed Student Loan Program (IGLP), the Auxiliary Loans to Assist Students (ALAS) program, and the Parent Loans for Undergraduate Students (PLUS) program. The rule was amended because it could have been read to enable an applicant to receive two loans in one academic year, a situation that would allow a borrower to exceed the maximum loan amount established by Federal Regulations. The Department's attention was called to this potential ambiguity in a letter from the U.S. Department of Education received August 1, 1983. This letter contained an interpretation of IGLP policy by the U.S. Department of Education. On the basis of this interpretation, the Commission apparently determined that its rule 4.06 was sufficiently ambiguous to warrant clarification. The Commission filed this emergency rulemaking to clarify the rule before the beginning of the 1983-84 academic year. However, the Commission indicated that it was aware as early as December, 1982 that lending institutions were interpreting Rule 4.06 in different ways.

Section 5.02 of the Illinois Administrative Procedure Act requires an agency to find that an emergency exists before it can dispense with the public notice requirements of Section 5.01. The Act defines an emergency as "the existence of any situation which the agency finds reasonably constitutes a threat to the public interest, safety or welfare." Section 5.02 also requires the agency to state, in writing, its reasons for that finding. In the notice statement of reasons for the emergency, the Commission stated that "[t]he approach of the 1983-84 academic year necessitates the filing of the emergency rules amendments." [sic] The Commission did not make an assertion that any situation exists which constitutes an emergency as it is defined in the Act.

However desirable these amendments might be, it is difficult to say that a delay in their adoption constitutes a "threat to the public interest." In the opinion of the Joint Committee, no emergency existed in this situation that would justify the adoption of emergency rules.

Moreover, even if the coming of the 1983-84 academic year and its increased demand for loans could be considered an "emergency" which requires an immediate expansion of eligibility and clarification of Rule 4.06, the Commission had ample notice of the problems in its rules and could have promulgated the amendments in accordance with Section 5.01 of

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the Illinois Administrative Procedure Act. The Committee has long taken the position that an "agency created emergency" will not justify the use of Section 5.02 procedures for rule adoption. This position was recently upheld by the Illinois Appellate Court, in Senn Park Nursing Center v. Miller (No. 81-2781). In that case the Court stated that "it would defeat the purposes of the notice and comment procedures if an agency could dispense with such procedures by enacting an emergency rule where the 'emergency' was created by the agency's failure to follow these procedures in the first place."

Therefore, the Joint Committee objects to the amendments to Rules 4.03, 4.06, and 4.18 because no emergency exists, and, even if an emergency does exist, the "emergency" was the result of the Commission's failure to file proposed rules in a timely fashion.

Date Agency Response Received: None Received

Nature of Agency Response: Failed to Respond

Effective Date: August 8, 1983



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Code Departments

DEPARTMENT ON AGING

Community Care Program Amendments

Initial Publication in Illinois Register: April 8, 1983

Date Second Notice Received: June 21, 1983

Joint Committee Recommendation: July 12, 1983

Specific Recommendation:

An examination of the "Determination of Need" form indicates that there are policy statements contained in the form and its instructions which appear to be "rules" under the definition given in Section 3.09 of the Illinois Administrative Procedure Act. A "rule" is any agency statement of general applicability which implements, prescribes, or applies law or policy. The "Determination of Need" form is used by Department personnel to assess the level of need of individual clients. The final determination as to eligibility is made by adding up the "points" on the form. For example, those clients with more serious functional impairment are awarded more points on the Determination of Need form. Only those clients who score a specified number of points are eligible for Community Care services.

Contained within the Determination of Need form and its instructions are numerous examples of how an applicant's needs will be measured and the standards the assessor will use. An example is found on page five of the instructions for the Determination of Need:

Scoring Guidelines (Scale)

As need increases, scores will increase. The applicants with the greatest impairments and the least assistance available will score higher than those with moderate impairments with some assistance available. When in doubt between two scores, use the higher score.

COLUMN A - FUNCTIONAL IMPAIRMENT

Score 0... Performs or can perform all essential components of the activity, with or without an assistive device, such that:

- no significant impairment of function remains; or
- activity is not required by the applicant (items 14 and 15 only); or

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- applicant may benefit from but does not require supervision or physical assistance.

Score 1... Performs or can perform most essential components of the activity with or without an assistive device but some impairment of function remains such that applicant requires some supervision or physical assistance in some or all components of the activity. This includes applicants who:

- experience minor, intermittent fatigue in performing the activity; or
- take longer than for an unimpaired person (see attached guidelines - duration); or
- must perform the activity more often than for an unimpaired person (see attached guidelines - frequency).

Score 2... Cannot perform most of the essential components of the activity, even with an assistive device, and requires a great deal of assistance or supervision to accomplish the activity. This includes applicants who:

- experience frequent fatigue on minor exertion in performing the activity; or
- take an excessive amount of time to perform the activity (see attached guidelines - duration); or
- must perform the activity much more frequently than for an unimpaired person (see attached guidelines - frequency).

Score 3... Cannot perform the activity and requires someone to perform the task, although applicant may be able to assist in small ways, or requires constant supervision.

In addition to the unadopted standards that are contained in the Determination of Need form and its instructions, there are also general statements of Department policy. An example of such statements is found on page two of the instructions which declares:

Functional impairment level is a measure of the applicant's ability to perform an activity safely within the environment in which the applicant lives. Ability is the applicant's physical and sensory capabilities and psychological competence and motivation to perform given functions despite impairment, in a manner which does not put the applicant's safety at risk. Environment is availability, location, and/or accessibility of facilities or necessary devices to the client.

Clarification of criteria and statements on how the areas of need on the Determination of Need form are the policies which are to be promulgated as rules under the Illinois

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Administrative Procedure Act. In order to give effect to the legislative review and public comment purposes of the Act, it is appropriate that such policy be promulgated in accordance with the IAPA.

Therefore, the Joint Committee recommends that the Department on Aging promulgate as rules those portions of the Determination of Need form and the instructions which contain policy statements that constitute "rules" within the definition of Section 3.09 of the Illinois Administrative Procedure Act.

Date Agency Response Received: Pending

Nature of Agency Response: Pending

Publication as Adopted in the Illinois Register: July 29, 1983

Effective Date: July 20, 1983

DEPARTMENT OF CENTRAL MANAGEMENT SERVICES

Travel Regulations

Initial Publication in Illinois Register: September 23, 1983

Date Second Notice Received: November 15, 1983

Joint Committee Objection: December 15, 1983

Specific Recommendation:

The Joint Committee suggests to the Department of Central Management Services that the proposed amendments to the Travel Regulations be withdrawn and that the Department comply with the Joint Committee's Five Year Report recommendation concerning the promulgation of uniform maximum rates of reimbursement for travel expenses, and that the Department work with the Legislative Travel Control Board, which is currently consulting with the other travel control boards, to develop uniform maximum reimbursement rates.

At the August 17, 1982 Joint Committee meeting, the Committee considered the Five Year Report on State Travel. The Committee voted to adopt Recommendation 7, which provided that:

The Joint Committee may wish to recommend that the Governor's Travel Control Board, the Legislative Travel Control Board, the Higher Education Travel Control Board, the Attorney General, the Comptroller, the Secretary of State, the State Superintendent

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of Education, and the State Treasurer take administrative action to consult each other and make their maximum reimbursement rates for travel expenses uniform.

As a result of this recommendation, the Legislative Travel Control Board, the members of which include the Auditor General, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives, surveyed 23 members of the travel control boards to determine their reimbursement rate preferences. Nineteen members responded to this survey, and the Legislative Travel Control Board tabulated the results. The survey indicated a general agreement concerning the preferred reimbursement rates, and therefore it was determined, by the Legislative Travel Control Board, that a voluntary uniform rate schedule was feasible. On September 7, 1983 the results of this survey were sent to those travel control board members surveyed.

In addition to the Joint Committee's study and recommendations concerning State travel, the General Assembly's interest in State employee travel cost, purposes and controls have also been illustrated during the past session. During that session House Resolution 157 was adopted. This Resolution directs the Auditor General to conduct a Management Audit of State Travel by examining the sufficiency of the regulations promulgated by the travel control boards and the authority of the boards to establish effective guidance and oversight regarding the purposes and cost of employee travel. From these actions of the Joint Committee and the House of Representatives, it is clear that the General Assembly is concerned with the promulgation and administration of regulations of the various travel control boards.

Despite the Joint Committee's recommendation, and the concern expressed by the General Assembly concerning the regulations of the various travel control boards, the Department of Central Management Services, on behalf of the Governor's Travel Control Board, has failed to consult with the other travel boards, and has unilaterally proposed rulemaking to increase the following travel reimbursement rates:

	<u>Present</u>	<u>Proposed</u>
Dinner	\$ 9.00	\$11.00
Per Diem	\$16.00	\$18.00
Lodging		
Downstate	\$25.00	\$30.00
Chicago Area	\$30.00	\$40.00
Out-of-State	\$35.00	\$50.00
Washington, D.C.	\$42.00	\$65.00
New York City	\$42.00	\$65.00

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The Legislative Travel Control Board submitted comments to the Department concerning the proposed changes in reimbursement rates and expressed the Legislative Travel Control Board's disappointment over the proposed unilateral action by the Governor's Travel Control Board to revise its rates prior to a meeting of all boards to discuss a possible uniform rate schedule. The Department of Central Management Services, on behalf of the Governor's Travel Control Board, indicated that the proposed rates were very close to the survey results, and the reimbursement increases were necessary to prevent hardship on employees due to the increased costs which have occurred since the last reimbursement rate increase three years ago. The Department stated that "Extensive consultation with other Travel Control Boards or waiting until all Boards agreed upon specific rates would have greatly prolonged the process and extended the hardship." It is of note, however, that the Joint Committee's recommendation was issued in August 1982; thus, it appears that the Department would have had sufficient time to consult with the other Boards had it so desired. The Department also indicated a willingness to cooperate in pursuing the goal of uniform rates.

In view of the fact that the Joint Committee recommended that the travel control boards develop uniform maximum reimbursement rates for travel expenses, and the fact that it has been determined that a voluntary uniform rate schedule is feasible, the proposed rulemaking undertaken by the Department of Central Management Services on behalf of the Governor's Travel Control Board appears to be premature.

Therefore the Joint Committee suggests to the Department of Central Management Services that the proposed amendments to the Travel Regulations be withdrawn and that the Department comply with the Joint Committee's Five Year Report recommendation concerning the promulgation of uniform maximum reimbursement rates for travel expenses, and that the Department work with the Legislative Travel Control Board, which is currently consulting with the other travel control boards, to achieve that goal.

Date Agency Response Received: Pending

Nature of Agency Response: Pending

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

DEPARTMENT OF CHILDREN AND FAMILY SERVICES

Financial Responsibility of Parents or Guardians of the Estates of
Children (89 Ill. Adm. Code 352)

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Initial Publication in Illinois Register: September 30, 1983

Date Second Notice Received: November 23, 1983

Joint Committee Recommendation: December 15, 1983

Specific Recommendation:

The Joint Committee suggests that the Department of Children and Family Services immediately promulgate rulemaking under the Illinois Administrative Procedure Act to include in its rules governing funded day care eligibility, its policy of giving priority for day care assistance to low income families.

During the Joint Committee review of the Department's amendments to rules governing the financial responsibility of parents or guardians, the Department was asked about the precise impact of the changes in the fee schedules which were proposed. In discussing this impact the Department indicated that in conducting the funded day-care program, priority for receipt of day care assistance was given to low income families. This establishment of priorities appears to constitute a "rule" as defined by Section 3.09 of the Illinois Administrative Procedure Act. This policy has not been promulgated in accordance with the requirements of Section 5.01 of the Act.

When this problem was brought to the attention of the Department, its representative agreed to promulgate a rulemaking to incorporate this policy. However, the Department was unwilling to commit to a date by which this rulemaking may be expected.

Section 4(c) of the Illinois Administrative Procedure Act states that "[n]o agency rule is valid or effective against any person or party, nor may it be invoked for any purpose until it has been made available for public inspection and filed with the Secretary of State as required by this Act." The Department's policy of giving priority to low income families could be invalidated unless it is promulgated in accordance with the provisions of the Act.

Therefore, the Joint Committee suggests that the Department of Children and Family Services immediately promulgate rulemaking setting forth its policy of giving priority for day care assistance to low income families.

Date Agency Response Received: Pending

Nature of Agency Response: Pending

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

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DEPARTMENT OF COMMERCE AND COMMUNITY AFFAIRS

Community Development Block Grant Program for Small Cities (47 Ill.
Adm. Code 110)

Initial Publication in Illinois Register: April 1, 1983

Date Second Notice Received: May 20, 1983

Joint Committee Recommendation: June 7, 1983

Specific Recommendation:

The Department of Commerce and Community Affairs is the State Agency which administers the Federal Community Development Block Grant-Small Cities Program, known on the State level as the Community Development Assistance Program. The Department has promulgated rules to govern the administration of this program. Along with the rules which have been adopted in accordance with the Illinois Administrative Procedure Act, the Department has also published "The Illinois Community Development Assistance Program: Application Guide." This Guide is to be revised annually.

An examination of the Application Guide indicates that there are policy statements in the Guide which appear to be "rules" under the definition given in Section 3.09 of the Illinois Administrative Procedure Act. A "rule" is any agency statement of general applicability which implements policy. While there are items such as informational reproductions of Federal regulations which do not require separate promulgation as rules, there are numerous examples of the Department's listing of standards which will be used to determine whether to grant an application for funds under the Program. Much of this policy does not appear in either current or proposed rules of the Department. An example is found on page 11-11 of the Guide:

Benefit to Low-and Moderate-Income People.

Benefit to low-and moderate-income people in the housing area is determined by the percentage of project funds which will benefit low-and moderate-income people. The points will be awarded on the following basis:

81-100%	200 points
66-80%	150 points
51-65%	75 points
50% and under	0 points

In addition to the unadopted standards that are contained in the Guide, there are also general statements of Department

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policy. An example of such statements is found on page IV-40 of the Guide, in a section entitled "Energy Conservation Supplement." In the first paragraph, the Department declares:

The purpose of this section is to clarify energy conservation criteria in regard to the preparation of an application proposal. To begin with, the Department of Commerce and Community Affairs will give priority to those projects which demonstrate that significant energy conservation will take place as a result of the project. [emphasis added]

Clarification of criteria and statements on which projects get priority are exactly the policies which are to be promulgated as rules under the Illinois Administrative Procedure Act. In order to give effect to the legislative review and public comment purposes of the Act, it is appropriate that such material be promulgated in accordance with the IAPA.

Therefore, the Joint Committee recommends that the Department of Commerce and Community Affairs promulgate as rules those portions of "The Illinois Community Development Assistance Program: Application Guide" which contain policy statements that constitute "rules" within the definition of Section 3.09 of the Illinois Administrative Procedure Act.

Date Agency Response Received: June 23, 1983

Nature of Agency Response: Agreed to Promulgate Rules

Publication as Adopted in Illinois Register: July 1, 1983

Effective Date: June 21, 1983

DEPARTMENT OF CONSERVATION

Proposed Tax Incentives to Rehabilitate Owner-Occupied Historic Residences (17 Ill. Adm. Code 360)

Initial Publication in Illinois Register: April 22, 1983

Date Second Notice Received: July 13, 1983

Joint Committee Recommendation: September 22, 1983

Specific Recommendation:

Proposed Section 360.20(b)(2) of 17 Ill. Adm. Code 360 states:

"Substantial rehabilitation" means a rehabilitation project that provides a visible

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community benefit that enhances or improves the quality of the historic building and involves at a minimum, the exterior of the historic building.

Section 20j-1(m) of the Revenue Act of 1939 states:

"Substantial rehabilitation" means a rehabilitation project that preserves the historic building in a manner that significantly improves its condition.

Section 20j-1(m) of the Act requires only that the rehabilitation of a building "significantly improves its condition"; the statute does not require that the rehabilitation involve the exterior of the building nor that it be "a visible community benefit." The requirements in the definition at Section 360.20(b)(2) exceed the statutory requirement at Section 20j-1(m) of the Act. The Joint Committee objects to Section 360.20(b)(2) of this rulemaking because the Department has exceeded its statutory authority.

The Department, which was involved in drafting the legislation, argued further that it is the legislative intent that the rehabilitation project would be visually accessible to the public; therefore, it must include some manner of exterior renovation. The reasoning is that since the owner gets a tax break, the public should be able to benefit by being visually rewarded. The representative indicated there was no debate on this issue; thus, no written record exists by which to judge the merit of the argument, nor does it appear as though that intent is expressed in the statutory definition.

In view of the Department's argument as to the original intent of the legislation, it appears that it would be appropriate, if the Department wishes to reflect that intent in the statute, that it seek remedial legislation. Accordingly, the Joint Committee recommends that the Department seek legislation to clarify the definition of "substantial rehabilitation" as requiring exterior rehabilitation.

Date Agency Response Received: Pending

Nature of Agency Response: Pending

Publication as Adopted in the Illinois Register: November 18, 1983

Effective Date: November 8, 1983

DEPARTMENT OF INSURANCE

Workers' Compensation Experience Reporting Rule (50 Ill. Adm. Code 2903)

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Initial Publication in Illinois Register: February 14, 1983

Date Second Notice Received: June 1, 1983

Joint Committee Recommendation: July 12, 1983

Specific Recommendation:

The Department of Insurance promulgated this rulemaking in order to implement Section 466 of the Illinois Insurance Code (Ill. Rev. Stat. 1981, ch. 73, par. 1065.13). This rulemaking delineates requirements concerning the reporting of premium, loss and expense experience for workers' compensation and employers' liability insurance, and requires the Director of Insurance to designate a "statistical agent," who must develop a "statistical plan" for the Director's approval. All insurance companies are required, under these rules, to report their experience in accordance with the "uniform statistical plan." The ultimate purpose of the rulemaking is to provide the Director of Insurance with information in such form that he may use it to determine whether particular insurance rate filings should be approved or disapproved.

Section 2903.30 of the rulemaking, which outlines the duties of the statistical agent states, in part, "The designated statistical agent shall, subject to the approval of the Director of Insurance, develop a statistical reporting plan"

Section 2903.40 of the proposed rulemaking, outlines reporting requirements and, in part, states:

Every insurer who is a member or subscriber of the designated statistical agent shall record and report its premium, loss and expense experience to the agent in accordance with the uniform statistical plan developed by the agent and approved by the Director of Insurance. All other insurers must record and report their premium, loss and expense experience to the Director of Insurance in accordance with the uniform statistical plan.

The Department of Insurance was asked to provide the specific statistical plan which it had developed to require the insurance companies to submit the required information. The Department explained that it had not developed a specific plan itself, but that it used the plan of its statistical agent, the National Council on Compensation Insurance (NCCI). That plan is entitled "National Council Workmen's Compensation Unit Statistical Plan Manual."

The Department was asked to adopt this plan as a rule or to amend its rulemaking to incorporate it by reference in

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accordance with the requirements of Section 6.01(b) of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1006.01(b)). The Department declined, stating that it would be too costly for the Department to develop its own plan and that it would not incorporate this plan as of a certain date because the plan was frequently amended.

Section 3.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1003.09) defines "rule" as each agency statement of general applicability that implements, applies, interprets or prescribes law or policy. Section 4(c) of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004(c)) provides that no agency rule is valid or effective against any person or party until it has been made available for public inspection and filed with the Secretary of State.

The NCCI statistical plan implements, interprets and prescribes policies which must be followed by insurance companies when filing information with the Department; hence, the NCCI statistical plan is a rule. The Department's refusal to modify its rule to reflect that it has incorporated the NCCI statistical plan either directly, or by reference as of a date certain, is a violation of the IAPA.

It is therefore recommended that the Department of Insurance adopt the statistical plan developed by the National Council on Compensation Insurance.

Date Agency Response Received: December 30, 1983

Nature of Agency Response: Refusal to Initiate Rulemaking

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

DEPARTMENT OF LAW ENFORCEMENT

Rules Governing Individual's Right to Access and Review Criminal History Record Information - Rules I and II

Initial Publication in Illinois Register: July 22, 1983

Date Second Notice Received: December 2, 1983

Joint Committee Recommendation: December 15, 1983

Specific Recommendation:

The Joint Committee believes it may be appropriate to allow the Department of Law Enforcement to promulgate rules which establish the maximum fees which may be charged by reviewing

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agencies for processing access and review requests for criminal history record information, and therefore, suggests to the Department that authorizing legislation be developed and presented to the General Assembly.

Section 1210.30(f) of the Department of Law Enforcement's proposed "Rules Governing Individual's Right to Access and Review Criminal History Record Information" provides that: "Reviewing Agencies may charge a fee not to exceed actual costs or \$25.00 for processing access and review requests, whichever is less" (a "reviewing agency" is defined in Section 1210.10 of the rules as a law enforcement agency or a correctional facility), and Section 1210.20 states that these rules are applicable only to information collected, stored and disseminated by the Department of Law Enforcement.

The Department was asked to provide a citation to the specific statutory authority upon which the imposition of processing fees was based. The Department responded that reviewing agencies are permitted to assess fees for processing access and review requests pursuant to federal regulations included at 28 CFR Chapter I, Part 20 (July 1, 1982). A review of these federal regulations revealed that they do not include any provisions which authorize the imposition of fees by local and state criminal history record information systems, although Subpart C of the regulations does indicate that local and state systems can charge processing fees to the extent that they utilize the services of the Department of Justice information systems. This federal regulation cannot, however, be interpreted to permit the assessment of processing fees for information maintained in a non-Department of Justice system.

The Department ultimately conceded that it does not have the statutory authority to promulgate any rule which establishes processing fees which may be collected from individuals who wish to review criminal history record information. However, the Department contends that this rule does not establish processing fees, but merely establishes the maximum fees which may be charged by reviewing agencies which have independent authority to collect such fees. However, the Department has been unable to point to any authority for it to establish any fees, maximum or otherwise.

In the absence of statutory authority, it appears that Department is not authorized to establish maximum fees for processing access and review requests. The Department believes that establishing maximum fees prevents reviewing agencies from implementing higher fees, and it appears that there may be merit in the Department's attempt to control these fees. As the local and state systems are federally funded, and the federal regulations may not permit the imposition of processing fees (although the federal regulations do not specifically prohibit the imposition of such fees), the Department should consider introducing legislations to obtain

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statutory authority to establish maximum fees, and request an opinion from the Department of Justice as to whether or not this statutory change would violate the federal regulations and endanger the systems' federal funding.

Therefore the Joint Committee suggests that the Department seek legislation authorizing regulation of such fees.

Date Agency Response Received: Pending

Nature of Agency Response: Pending

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

DEPARTMENT OF NUCLEAR SAFETY

Licensing of Persons in the Practice of Medical Radiation Technology (32
III. Adm. Code 401)

Initial Publication in Illinois Register: August 5, 1983

Date Second Notice Received: October 20, 1983

Joint Committee Recommendation: November 17, 1983

Specific Recommendation:

The Joint Committee suggests that the Department of Nuclear Safety consider developing legislation which will provide the Department the statutory authority to establish rules and regulations for the licensing of persons in the practice of medical radiation technology.

At the November 17, 1983, meeting, the Joint Committee issued six objections to the Department of Nuclear Safety rules for the licensing of persons in the practice of medical radiation technology. The Joint Committee issued the objections based upon the Department's lack of statutory authority for the following:

1. To require an examination as a condition for licensure.
2. To charge an application fee for an examination.
3. To suspend or revoke a license.
4. To exempt students or other individuals from the requirements of the Act.
5. To issue a conditional or temporary license.

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6. To require clinical practice as a condition for licensure.

The Department stated that these rules and regulations were being promulgated in order to protect the public health and safety. The Department explained that the rules and regulations meet the guidelines for national standards as established in proposed 42 C.F.R. 75 (1983) and by the Committee on Allied Health Education and Accreditation of the American Medical Society. The Department further explained that of the thirteen states which require the licensing of medical radiation technologists, all follow the above mentioned guidelines.

If the Department, after due consideration, believes it is necessary to the public health, safety and welfare, to further regulate the practice of medical radiation technology, then the Department should prepare legislation which would authorize such regulation, and should submit such legislation to the General Assembly for its consideration.

Therefore, the Joint Committee suggests to the Department of Nuclear Safety that the Department consider developing legislation which will provide the Department the authority to establish rules and regulations for the licensing of persons in the practice of medical radiation technology.

Date Agency Response Received: December 14, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: December 30, 1983

Effective Date: January 1, 1984

DEPARTMENT OF PUBLIC AID

Recipient Utilization Review Program (89 Ill. Adm. Code 120.4)

Initial Publication in Illinois Register: April 1, 1983

Date Second Notice Received: May 17, 1983

Joint Committee Recommendation: June 14, 1983

Specific Recommendation:

Section 7.05(4) of the Illinois Administrative Procedure Act states that "[t]he Joint Committee shall suggest rulemaking of an agency whenever the Joint Committee, in the course of its review of the agency's rules under this Act, determines that the agencies rules are incomplete, inconsistent or otherwise deficient."

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The Department's AFDC, AABD and GA Manuals contain several policy statements which are rules under the definition of "rule" stated in Section 3.09 of the Illinois Administrative Procedure Act.

Sections 1120.3 of the AFDC and AABD Manuals and Section 1130.3 of the GA Manual state that if the Department determines that the recipient's medical usage is not justified, it will send a written notice to the recipient informing them that they are required to contact the local office within 10 days to designate a primary care physician. Sections 1120.4 of the AFDC and AABD Manuals and Section 1130.4 of the GA Manual state that when a former recipient reapplies for assistance and was not terminated from participation in the program prior to discontinuance of assistance, the recipient will be restricted to a primary care physician upon approval of re-application. Also, if a member(s) of a restricted household becomes a member of another assistance unit, the new assistance unit is restricted to a primary care physician. Sections 1120.7 of the AFDC and AABD Manuals and Section 1130.7 of the GA Manual state that if a non-cooperating recipient's Medical Eligibility Card has been withheld and an appeal is filed within 10 calendar days of the date of the notice of restriction to a primary care physician, the Medical Eligibility Card will immediately be released.

These Department policies meet the definition of a "rule" as stated in Section 3.09 of the Illinois Administrative Procedure Act. Therefore, pursuant to Section 7.05(4) of the Illinois Administrative Procedure Act, the Joint Committee recommends to the Department that it initiate rulemaking to complete its rule concerning the Recipient Utilization Review Program.

Date Agency Response Received: None

Nature of Agency Response: None

Publication as Adopted in the Illinois Register: July 15, 1983

Effective Date: July 1, 1983

DEPARTMENT OF PUBLIC HEALTH

Permit Application Fees - Ch. 7, 2d Ed.; Rules 7.02.01 and 7.03.01

Initial Publication in Illinois Register: February 25, 1983

Date Second Notice Received: April 14, 1983

Joint Committee Recommendation: May 10, 1983

Specific Recommendation:

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Throughout Section 12 of the Illinois Health Facilities Planning Act, the Department (referred to as "Agency" in the Act) prescribes rules, regulations, standards, and criteria with the approval of the State Board. However, Section 12(8) of the Act states that the Agency shall:

Charge and collect from the permit applicant an amount determined by the State Board to be a reasonable application fee for the processing of the application by the State Board, the Agency and the appropriate recognized areawide health planning organization. The State Board shall set the amount by regulation. All fees collected under the provision of this Act shall be deposited with the State Treasurer.
[emphasis added]

Under the current practice, the State Board determines the amount for application for permit fees and the Department promulgates them in order to provide the public the opportunity to comment on them.

Section 12(8) of the Act states that the State Board shall set the amount of the permit application fee by regulation, and Section 18 of the Act provides that both the Department and State Board shall be covered by the provisions of the Illinois Administrative Procedure Act. Thus, it appears that the State Board has the authority to set the amount of the fee by regulation, and the Department does not.

The Joint Committee recommends that the Department develop legislation that would amend Section 12(8) of the Act to allow the Department rather than the State Board to set the fees by regulation.

Date Agency Response Received: None

Nature of Agency Response: None

Publication as Adopted in the Illinois Register: May 27, 1983

Effective Date: May 13, 1983

Family Planning Services, Title X (77 Ill. Adm. Code 635)
[Emergency]

Initial Publication in Illinois Register: July 15, 1983

Joint Committee Recommendation: August 18, 1983

Specific Recommendation:

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The Department of Public Health has received verbal notice from the Federal government that it has been chosen to administer the Title X Family Planning Program on a statewide basis. The Department was selected on a competitive basis to administer the program on a statewide basis. 42 U.S.C.A. Section 300(b) (1982) provides the basis by which grants and or contracts will be awarded. Awards were based upon "the number of people to be served, the extent to which family planning services are needed locally, the relative need of the applicant, and the family planning agency's capacity to make rapid and effective use of such assistance.

The Department was asked to cite the specific statutory authority which empowers it to promulgate rules for the Title X Family Planning Program.

The Department responded that since this was a new program, it is not clear if there is in fact specific statutory authority empowering it to promulgate rules for the Family Planning Program. However, the Department stated that it believes it has the authority based on Ill. Rev. Stat. 1981, ch. 111½, par. 22; ch. 127, par. 55.05; or ch. 127, par. 55.27.

Chapter 111½, par. 22, pertains to the Department's authority to adopt rules and regulations related to sanitary investigations and enforcing quarantines; it appears to be in no way related to the promulgating of rules for family planning services.

Chapter 127, paragraphs 55.05 and 55.27 empower the Department to accept and disburse State and Federal money to public or private agencies for health purposes or programs; neither provision addresses rulemaking. It appears doubtful, therefore, whether the Department has explicit authority to promulgate rules to entities receiving funds, since no specific provision providing such authority can be found in the statutes. Instead, it appears the Department is attempting to exercise implicit rulemaking authority by going beyond the specific provisions of the statutes. The Department is promulgating rules to delegate agencies requiring them to follow policies and meet criteria established by the Department. Since this type of rulemaking adds requirements which go beyond the statutes, it appears the Department is in fact promulgating legislative rules.

The Joint Committee therefore recommends to the Department that it seek legislation in the October session of the General Assembly which will provide the Department explicit authority to promulgate rules for the Family Planning Service Program.

Date Agency Response Received: August 26, 1983

Nature of Agency Response: Agreed to Seek Legislation

1983 STATEMENTS OF RECOMMENDATION
TO PROPOSED RULES

Effective Date: July 6, 1983

Minimum Standards - Skilled Nursing and Intermediate Care Facilities

Initial Publication in Illinois Register: April 15, 1983

Date Second Notice Received: August 8, 1983

Joint Committee Recommendation: September 22, 1983

Specific Recommendation:

The Department of Public Health's proposed "Minimum Standards - Skilled Nursing and Intermediate Care Facilities" provide, in relevant part, that in order to qualify as a nurse's aide, nurse technician or orderly, an individual must, within 45 days of initial employment, begin an approved course (of 120 hours), or take a proficiency examination which must be completed within 120 days of initial employment. This proposed provision is apparently a compromise position, resulting from discussion between industry representatives and Department personnel, following a Joint Committee objection in July 1982 to a proposed rule with a stringent 120-hour approved course requirement. At the time of the July Joint Committee meeting, both the House Sponsor and the Senator Sponsor noted that the intent of the legislation (and their understanding of an agreement with the Department) was that the 120 hour requirement would not be imposed.

The proposal now before the Joint Committee appears, from the comments of the sponsors, both at the time of passage and at the July Joint Committee meeting, in compliance with the intent of the legislation. It allows, as an alternative to the stringent 120 hour course requirement, the passage of a proficiency test. The applicants could, under the proposed rule, take the test more than once and study for the test through one or more "recognized courses" of short duration to be offered by the facility for whom they work.

Unfortunately, the current statute allows only 45 days from initial employment for passage of a proficiency exam. Thus, the rule as proposed would violate the clear terms of the statute.

Since the proposed rule more accurately reflects the intent of the legislation as indicated by both House and Senate sponsors, the Joint Committee recommends that the Department of Public Health seek legislation in the fall veto session to extend the 45 day period allowed for passing the proficiency examination to 120 days.

Date Agency Response Received: November 14, 1983

1983 STATEMENTS OF RECOMMENDATION
TO PROPOSED RULES

Nature of Agency Response: Agreed to Seek Legislation

Publication as Adopted in the Illinois Register: November 28, 1983

Effective Date: November 10, 1983

Minimum Standards - Skilled Nursing and Intermediate Care Facilities

Initial Publication in Illinois Register: April 15, 1983

Date Second Notice Received: August 8, 1983

Joint Committee Recommendation: September 22, 1983

Specific Recommendation:

The "Nursing Home Care Reform Act of 1979" contains provisions concerning the training and qualifications of nurse's aides, orderlies and nurse technicians. Section 3-206(a)(5) provides that such persons must, before they may assist with the personal or medical care of a resident in a nursing home facility, either begin a Department approved course of training within 45 days of initial employment or be exempted from the course through one of the means specified in the Act. This section further requires that the approved course be "successfully completed within 120 days of initial employment in the capacity of a nurse's aid, orderly, or nurse technician at a facility."

The proposed amendment to Rule 03.06.03.12 would allow more than 120 days for the presentation of the basic content of an approved course if the course is offered by an educational institution on a term, semester, or trimester basis. Obviously, such a course could not be completed within 120 days of initial employment. Thus, this provision is clearly in conflict with Section 3-206(a)(5) of the Act.

The Department stated that the reason it wants to allow educational institutions a longer time period to administer the course is that in several areas of the State an educational institution, such as a community college, is the only facility which will conduct the training. Sometimes the 120 day limitation does not correspond with the educational institution's calendar.

The Joint Committee notes that in Rule 03.06.03.12 the Department has authorized educational institutions to provide an approved course of training of a longer duration than 120 days for nurse's aides, orderlies and nurse technicians in apparent violation of Section 3-206 of the "Nursing Home Care Reform Act of 1979," which clearly states that such a course of training must be completed by these individuals, who are not otherwise exempt, within 120 days of initial employment.

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The Joint Committee feels such an exception may be warranted, and thus the Committee recommends that the Department seek legislation to authorize such an exception.

Date Agency Response Received: November 14, 1983

Nature of Agency Response: Agreed to Seek Legislation

Publication as Adopted in the Illinois Register: November 28, 1983

Effective Date: November 10, 1983

DEPARTMENT OF REVENUE

Bingo License and Tax Act (86 Ill. Adm. Code 430)

Initial Publication in Illinois Register: February 18, 1983

Date Second Notice Received: April 5, 1983

Joint Committee Recommendation: April 19, 1983

Specific Recommendation:

Proposed Section 430.160(a)(3) of the Bingo License and Tax Regulations (86 Ill. Adm. Code 430.160(a)(3)) allows the Department of Revenue to prohibit the issuance of licenses for any bingo session beginning less than two hours after the conclusion of a prior session conducted on the same premises.

The Joint Committee recommends that the Department of Revenue develop legislation amending the Bingo License and Tax Act (Ill. Rev. Stat. 1981, ch. 120, par. 1101 et seq.) to grant the Department the specific statutory authority to establish this two hour prohibition by rule.

Date Agency Response Received: July 27, 1983

Nature of Agency Response: Refusal to Modify or Withdraw

Publication as Adopted in the Illinois Register: May 13, 1983

Effective Date: June 1, 1983

Miscellaneous Agencies

OFFICE OF THE STATE FIRE MARSHAL

Rules and Regulations Relating to General Storage

Initial Publication in Illinois Register: March 11, 1983

1983 STATEMENTS OF RECOMMENDATION
TO PROPOSED RULES

Date Second Notice Received: October 4, 1983

Joint Committee Recommendation: November 17, 1983

Specific Recommendation:

Section 160.510 sets forth provisions governing the operation and dismantling of abandoned bulk plants. Section 160.150 states:

Section 160.510 ABANDONED BULK PLANTS

- a) If a bulk plant is closed for a period of twenty-four (24) months, the owner shall either put the plant back into operation or remove all petroleum [sic] products and properly secure the site for possible future use.
- b) If after five years from date of original closing said bulk plant is not restored to operation it shall be dismantled and the equipment removed.
- c) Such dismantling and removal shall be completed within 90 days.

When the Office was asked its specific statutory authority for promulgating rules which outline dismantling procedures for abandoned bulk plants (Sections 160.510 (b) and (c)), the Office admitted that it has no specific statutory authority. The Office explained that it relies on Section 2 of "An Act to regulate the storage, transportation, sale and use of gasoline and volatile oils" which in part, states, "[t]he Office of the State Fire Marshal has [the] power to make and adopt reasonable rules and regulations governing the keeping, storage, transportation, sale or use of gasoline and volatile oils" to promulgate this rule. The Joint Committee questioned whether this statutory grant of authority includes the power to promulgate rules governing the dismantling of abandoned bulk plants, in view of the fact that an abandoned plant will not be keeping or storing any gasoline or oil in its tanks. The Office contends that it is required to make decisions balancing the public safety against individual property rights as part of the process of regulating the storage of volatile liquids. In exercising this authority, the Office stated, it has determined that rules governing the operation and dismantling of abandoned bulk plants are advisable because certain amounts of potentially dangerous liquid and fumes will, as a practical matter, always be present at an unused bulk plant. Nonetheless, it is obvious from a reading of the language of the statute that it is directed at active plants and not closed and abandoned plants.

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The Office was also asked if it had further policy relating to the dismantling of abandoned bulk plants. The Office explained that it has not completely formulated its policy covering all aspects of the dismantling operation but that its general policy is to consider a bulk plant to be "dismantled" if all the plant's storage tanks have been torn down, cut in two, had numerous holes cut in them, or been crushed with a crane. This policy is obviously significant, since there is likely to be a considerable cost difference between completely tearing down a plant and merely cutting a tank in two or putting holes in it. When asked that this policy be inserted into the rule, the Office declined to do so, stating that it might amend the rule at some time in the future.

The Office's arguments are unpersuasive. Bulk plants, like other property, belong to owners who have a right to use them within wide limits, unless the use is one specifically prohibited by statute. Clearly, the Office retains the authority to regulate any bulk plant which stores either gasoline or volatile oils. However, there appears, in the absence of a positive individual finding of fire or explosion hazard, an unbridgeable gap between this power to regulate and the power to promulgate rules governing the dismantling of abandoned bulk plants. Despite the practical considerations cited by the Office in support of its position, it appears the Office has only the statutory authority to regulate storage, transportation and sale of liquids and that this authority does not include power to promulgate rules governing the dismantling of abandoned bulk plants.

Furthermore, Section 7.04 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1007.04) provides that one of the functions of the Joint Committee is the "promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules." The proposed rulemaking, as it now exists, violates Section 7.04 of the IAPA in that the rulemaking does not promote an understanding on the part of the public respecting such rules because the Office has failed to include its policy governing the dismantling of bulk plants within its rulemaking.

In the absence of any explicit or implicit statutory authority, it appears that the Office is not authorized to promulgate rules governing the dismantling of abandoned bulk plants. In view of the fact that the proposed section was promulgated for the purpose of protecting the public's safety, it appears that there may be some merit in the argument that there is a need for such rules. However, this appears to be a matter of policy to be properly considered by the General Assembly.

The Joint Committee suggests that the Office seek legislation specifically granting the Office the authority to promulgate rules governing the dismantling of abandoned bulk plants.

1983 STATEMENTS OF RECOMMENDATION
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Date Agency Response Received: Pending

Nature of Agency Response: Pending

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

Rules and Regulations Relating to Service Stations (41 Ill. Adm. Code 160)

Initial Publication in Illinois Register: March 4, 1983

Date Second Notice Received: October 20, 1983

Joint Committee Recommendation: November 17, 1983

Specific Recommendation:

Section 170.76 is entitled "Leaking Underground Tanks," and states when a tank is determined to be leaking, it can be removed, replaced or repaired. Section 170.76(c) delineates rules governing the repair of underground tanks and provides that existing underground tanks may be glass or epoxy-lined, provided that certain conditions for repairs are met. These certain conditions are outlined within Section 170.76(c) with Section 170.76(c)(3) stating, "Any firm proposing such a repair shall have on file, with the State Fire Marshal, a certificate of insurance."

The Office was asked its specific statutory authority for requiring a tank repair firm to have a certificate of insurance on file with the State Fire Marshal. The Office replied that it had no specific statutory authority for the provision but relied on its general authority set forth in Section 2 of "An Act to regulate the storage, transportation, sale and use of gasoline and volatile oils" (Ill. Rev. Stat. 1981, ch. 127½, par. 154) which states in part, "[t]he Office of the State Fire Marshal has [the] power to make and adopt reasonable rules and regulations governing the keeping, storage, transportation, sale or use of gasoline and volatile oils." The Office asserted that this regulation concerns the "storage," "keeping" and "sale" of "gasoline and volatile oils" and is a reasonable exercise of its rulemaking power for the purpose of protecting the public's safety and tank owners from unqualified repairers who cannot obtain insurance. The Office further stated that firms have traditionally filed such certificates with the Office, and that it has not received any negative comments pursuant to this newly proposed requirement.

Section 2 of "An Act to regulate the storage, transportation, sale and use of gasoline and volatile oils" does not, explicitly or implicitly, grant the Office the authority to promulgate

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rules requiring tank repair firms to file a certificate of insurance with the Office. It appears that the Office's assertion that this provision is a reasonable exercise of its rulemaking power and is needed for the purpose of protecting the public, is without merit. Rather, the major thrust of the proposed rule appears to be to protect the interest of the tank owner from possible financial loss. While the protection from financial loss is important, this appears to be a matter within the responsibility of the tank owner, and not within the authority of the State Fire Marshal to regulate. Certainly the question of whether or not a tank repairer is insured is at the very best only tangentially related to the question of whether the volatile liquids are being stored safely. Hence, the proposed rule appears to stretch the statutory grant of rulemaking authority beyond that which was reasonably intended by the General Assembly.

In the absence of any explicit or implicit statutory authority, it appears that the Office is not authorized to promulgate this rule. In view of the fact that the proposed rule was promulgated for the purpose of protecting the public's safety, and that firms have traditionally filed such certificates with the Office, it appears that there may be a need for such a rule. However, this appears to be a matter of policy to be properly considered by the General Assembly.

The Joint Committee suggests that the Office seek legislation specifically granting the Office the statutory authority to require tank repair firms to file a certificate of insurance with the Office.

Date Agency Response Received: Pending

Nature of Agency Response: Pending

Publication as Adopted in the Illinois Register: Pending

Effective Date: Pending

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Because the deadline for responding to many of these certificates of objection had not passed as of preparation of this Report, the date and nature of many agency responses are not included here.

Code Departments

DEPARTMENT OF FINANCIAL INSTITUTIONS

Rules and Regulations Governing the Execution of Enforcement of the Illinois Consumer Finance Act

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

Section 19(d) of the "Rules and Regulations Governing the Execution and Enforcement of the Illinois Consumer Finance Act" states in pertinent part:

Licensees shall not distribute or cause to be distributed handbills or circular advertising material, except in the licensed office or through the mails, without permission in each instance in writing from the Department;

Section 20(i) of the rules involves loans by mail programs. Section 20(i)(6) states:

Advertising to be used in the authorized program and other Acts which may be applicable shall be submitted to the Department for review before use.

Section 12 of the Act states in relevant part:

No licensee or other person, co-partnership, association, or corporation may advertise, print, display, publish, distribute, or broadcast or cause to permit to be advertised, printed, displayed, published, distributed or broadcast, in any manner, any statement or representation with regard to the rates, terms or conditions for the

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lending of money, credit, goods or things in action in the amount or of the value of \$1500 or less, which is false, misleading or deceptive.

Section 12 of the Act allows the Department to forbid advertising that is "false, misleading or deceptive." The Department advised that Section 18 of the Act is relied upon as the statutory authority for the regulation of advertising. Section 18 of the Act forbids the use of any device to secure greater interest than authorized by law. The section directs that loans at excessive rates are unenforceable.

Despite the Department's assertion, it is unclear how Section 18 of the Act, by any interpretation, would empower the Department to mandate prior approval of advertising copy. While Section 12 of the Act empowers the Department to forbid advertising that is "false, misleading, or deceptive," there is nothing in that section that would authorize the prior review of advertising material.

Advertising is a form of commercial speech which enjoys protection under the First Amendment to the United States Constitution. These rules of the Department are overbroad in that they purport to prohibit certain types of advertising without prior approval of the Department even though there has been no showing that these types of advertising are per se "false, misleading or deceptive." A statute may not completely suppress the dissemination of truthful information about entirely lawful activity; Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748 (1978). Of course, there is no constitutional right to disseminate false or misleading advertising, F.T.C. v National Commission on Egg Nutrition, 517 F.2d 485 (24th Cir. 1975). The Department, to cure this constitutional defect, would have to develop standards and criteria to be used in banning false, misleading or deceptive advertising.

Therefore, the Joint Committee objects to Sections 19(d) and 20(i)(6) of the rules because the sections in their present form exceed the Department's statutory authority and are unconstitutional.

Rules and Regulations Governing the Execution and Enforcement of the Illinois Consumer Finance Act

Basis of Review: Five Year/Industry and Labor/Business Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

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Rule 23(o) of the Department of Financial Institutions' "Rules and Regulations Governing the Execution and Enforcement of the Illinois Consumer Finance Act" states:

All licenses not implemented by use within a period of six months after issue shall be forfeit unless failure is proven to be for reasonable cause.

A new application and payment of all applicable fees is required after such forfeiture.

The Department explained that the section is authorized by Section 21 of the Act which states in relevant part that:

The Department is authorized and empowered to make and enforce such reasonable relevant rules, regulations, directions, orders, decisions, and findings as may be necessary for the execution and enforcement of the provisions of this Act and the purposes sought to be obtained herein, in addition thereto and not inconsistent therewith.

The Department stated that "reasonable cause" is a judgmental decision by the Department. It was indicated that "reasonable cause" may include acts of God and other causes not found to be willful.

The Department advised that it believes that this provision is consistent with the Departmental regulation of consumer finance agencies. It was explained that conditions, financial and other, that were acceptable at the time of licensing, are susceptible to change and deterioration over a period of time. The Department believes that by having this 6 month requirement the Department can more closely monitor the financial positions of licensees.

It appears that the Department lacks the statutory authority to revoke a license in this manner. Section 9 of the Act states that a license shall be revoked if it shall find that there is a failure to pay the annual license fee, the licensee has violated a provision of the Act or lawful rule or regulation, or any fact or condition exists which if it had existed at the time of the original application would have warranted the Department refusing the license. However, no provision is made for revocation based upon failure of a licensee to implement the license within six months.

Section 9 of the Act also states that "no license shall be revoked except after the licensee shall have had notice of hearing thereon and an opportunity to be heard thereat."

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Despite the fact that Section 23(o) refers to a "forfeiture," the effect of the rule is to revoke a license contrary to the causes listed in the Act, or the procedure for revocation. The statute sets forth a number of specific causes for revocation, none of which is lack of implementation. The courts have held that, "[w]here statute . . . providing for revocation . . . specified causes for which licenses might be revoked, they could not be revoked for any other cause." Kaeseberg v. Ricker, 177 Ill.App. 527, (1913).

In addition to attempting, impermissibly, to expand the causes for revocation by rulemaking, the rule attempts to circumvent the notice and procedural requirements relative to revocation as determined in Section 9. Therefore, the Joint Committee objects to this rule.

Rules and Regulations Governing the Execution and Enforcement of the Illinois Consumer Installment Loan Act (38 Ill. Adm. Code 110)

Basis for Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

Deferment charges are the charges that may be assessed by a lender when a borrower wishes to postpone payment(s) on a loan for a specified period of time. Occasionally, due to illness or layoff from a job, or for other such reasons, a borrower may be unable to make a loan payment for a month or two. Rather than have the loan placed in default, the borrower can seek a deferment of the loan.

Section 110.100(m)(1) (former Section 10(m)) of the rules concerns charges for deferments of loan payments and the effect of deferments upon rebates for prepayment of a loan. Section 110.100(m)(1) (former Section 10(m)) requires:

The amount which may be charged for a one month's deferment is equal to the difference between the rebate that would be required for prepayment in full as of the scheduled due date of the deferred installment and the rebate which would be required for prepayment in full as of one month prior to said date.

The Department was asked the specific statutory authority for this rule involving deferment charges. The Department conceded that, unlike the Consumer Finance Act (Ill. Rev. Stat., ch. 17, par. 5601 et seq.), the Consumer Installment Loan Act makes no mention of deferment charges. It would, therefore, appear that attempt to authorize deferment charges

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and regulate the imposition of these charges exceeds the Department's statutory authority.

The failure to include a specific provision in the Consumer Installment Loan Act which would authorize regulation of deferment may have been an oversight, in view of the inclusion of specific regulatory authority in the companion law, the Consumer Finance Act. It does seem somewhat incongruous to allow regulatory jurisdiction in one case, and not the other.

Therefore, the Joint Committee objects to Section 110.100(m)(1) (former Section 10(m)) because the Department lacks the statutory authority to authorize and regulate deferment charges.

Rules and Regulations Governing the Execution and Enforcement of the
Illinois Consumer Installment Loan Act (38 Ill. Adm. Code 110)

Basis for Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

Section 110.170(a)(1) (former Section 17(a)(1)) allows the cancellation of licensee-provided credit insurance within 15 days of the date of the loan, "by written request of all parties to the obligation." Section 110.170(a)(1) (former Section 17(a)(1)) also requires that if such cancellation occurs, the entire premium cost must be refunded. Section 110.170(d)(1) (former Section 17(d)(1)) governs property insurance and provides that licensee-issued insurance may be cancelled within 15 days of the loan date by written request of all parties to the obligation, and that if so cancelled, the fee must be refunded in full.

The Department was asked the specific statutory authority for these provisions which, in effect, may allow a borrower to receive 15 days of free insurance coverage. The Department cited no specific statutory authority for these provisions. Section 15(a) of the Act involves credit insurance and Section 15(b) involves property insurance. Both sections of the Act speak of a requirement of consistency with the Illinois Insurance Code.

The Department relies upon the standards of the Department of Insurance in making a determination as to the reasonableness of insurance policies. It would seem consistent for the Department to also rely upon the standards of the Department of Insurance relative to premium refunds.

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Section 953.10(a) (former Rule 9½.03) of the Department of Insurance entitled "Premium Refunds" states that refund of premiums in the case of decreasing term insurance, (one type of which is credit insurance) is to be computed based upon the Rule of 78ths. It would appear that the Department of Financial Institution's rules that allow up to 15 days of free coverage are in conflict with the rules of the Department of Insurance.

Rules and Regulations Governing the Execution and Enforcement of the Illinois Consumer Installment Loan Act (38 Ill. Adm. Code 110)

Basis for Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

Section 110.190(d) (former Section 19(d)) of the Department of Financial Institutions' "Rules and Regulations Governing the Execution and Enforcement of the Illinois Consumer Installment Loan Act" provides that:

Licensees shall not distribute or cause to be distributed handbills or circular advertising matter through the mails, without permission in each instance in writing from the Department, and house to house distribution of "throw-aways" are absolutely forbidden.

Section 110.200(f)(9)(F) (former Section 20(i)(6)) of the rules states:

Advertising to be used in the authorized program and other Acts which may be applicable shall be submitted before the Department for review to assure compliance with Section 18 of the Act.

Advertising is a form of commercial speech that enjoys certain protections under the First Amendment to the United States Constitution. These rules appear overbroad in that they prohibit advertising, even that which cannot be constitutionally prohibited, unless such advertising is first approved by the Department. The courts have held that a state may not completely suppress the dissemination of truthful information about entirely lawful activity, Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748 (1946). It has also been held that there is no constitutional right to disseminate false or misleading advertising, F.T.C. v. National Commission on Egg Nutrition, 517 F.2d 485 (7 Cir. 1975). The Department could, therefore, cure the constitutional infirmities associated with this provision by

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developing standards for advertising which restrict such advertising only to the extent allowed by the constitution. The present rules contain no such restrictions.

Section 18 of the Act governs advertising. The section states in relevant part that, "Advertising for loans transacted under this Act may not be false, misleading or deceptive." It would appear that Sections 110.190(d) and 110.200(f)(9)(F) (former Sections 19(d) and 20(i)(6)), in addition to their constitutional infirmities, are unwarranted attempts at the expansion of Section 18 of the Act. The sections purport to forbid certain advertising practices entirely, and other practices without the permission of the Department. This is much more restrictive than the Act which only prohibits false, misleading, or deceptive advertising, as there has been no showing that these forbidden practices are per se false, misleading or deceptive.

The Department explained that the standards and criteria used by the Department are those of Section 18 of the Act, and it also indicated that it believes that Sections 110.190(d) and 110.200(f)(9)(F) (former Sections 19(d) and 20(i)(6)) are not unwarranted expansions of Section 18 of the Act.

Despite the Department's assertions, it appears that Sections 110.190(d) and 110.200(f)(9)(F) (former Section 19(d) and Section 20(i)(6)) of the rules are unwarranted expansions of the statute. In addition, these sections of the rules suffer from constitutional infirmities and lack standards and criteria for their application, contrary to the mandate of Section 4.02 of the Illinois Administrative Procedure Act which requires the inclusion in rules of standards by which discretionary power is to be exercised.

The Joint Committee objects to Sections 110.190(d) and 110.200(f)(9)(F) (former Section 19(d) and Section 20(i)(6)) of the rules because they impermissibly expand the scope of the statute, are unconstitutional, and because they do not meet the mandate of Section 4.02 of the IAPA.

Rules and Regulations Governing the Execution and Enforcement of the
Illinois Consumer Installment Loan Act

Basis for Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

Section 110.190(j) (former Section 19(j)) of the "Rules and Regulations Governing the Execution and Enforcement of the Illinois Consumer Installment Loan Act" contains a general prohibition of solicitation of loan business outside the office or by telephone. There are a number of exceptions to this

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prohibition, including "a generalized solicitation made through any employer or group of his employees," and "offering a loan service to its present or former customers or customers of its affiliates." The Department was asked the purpose of these exceptions.

The Department advised that Section 18 of the Act, which governs advertising, is the statutory authority for this provision. Section 18, in relevant part, states that advertising may not "be false, misleading or deceptive." The Department stated that the purpose of the exceptions is to prohibit the use of random and unsolicited calls to the general public, thus precluding deceptive practices. It was also noted that the exceptions may have been allowed as the general premises that former borrowers are acquainted with terms and costs of a loan.

The general prohibition of loan business outside the office or by telephone, and the exceptions to this prohibition contained in Section 110.190(j) (former Section 19(j)) exceed the statutory authority of the Department. As previously indicated, Section 18 of the Act states that advertising may not "be false, misleading, or deceptive." The Department has made no showing that the activities proscribed in Section 110.190(j) (former Section 19(j)) are per se "false, misleading or deceptive," nor does it appear that they will be able to make such a showing.

The Joint Committee objects to Section 110.190(j) (former Section 19(j)) of the rules because it exceeds the statutory authority of the Department.

Rules and Regulations Governing the Execution and Enforcement of the Illinois Consumer Installment Loan Act (38 Ill. Adm. Code 110)

Basis for Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

Section 110.230(q) (former Section 23(q)) of the Department of Financial Institutions' "Rules and Regulations Governing the Execution and Enforcement of the Illinois Consumer Installment Loan Act" states:

All licenses not implemented by use within a period of 6 months after issue shall be forfeit unless failure is proven to be for reasonable cause. A new application and payment of all applicable fees is required after such forfeiture.

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Section 4 of the Act states in relevant part that "the license shall remain in effect until it is surrendered by the licensee or revoked by the Department as hereinafter provided." Section 9 of the Act requires that for revocation of a license the Department must provide notice to the licensee and hold a hearing prior to revocation. In addition, the section details the causes for which a license may be revoked. Conspicuous in its absence from this provision is not using a license within 6 months of issuance.

As examination of the Consumer Installment Loan Act makes it evident that Section 110.230(q) (former Section 23(q)) of the rules is an impermissible attempt to circumvent the statutorily mandated bases for revocation of a license.

Therefore, the Joint Committee objects to Section 110.230(q) (former Section 23(q)) because of lack of statutory authority.

Division of Financial Planning and Management Service Rules and Regulations (38 Ill. Adm. Code 140)

Basis for Review: Five Year/Industry and Labor/Business Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

Section 140.80(b) (former Section 8) of the rules states in pertinent part:

Licensees shall not distribute or cause to be distributed handbills or circular advertising matter except in the licensed office, or through the mails, without written permission from the Department.

Section 13 of the Act states in relevant part:

No licensee shall advertise, in any manner whatsoever, any statement or representation with regard to the rates, terms or conditions of financial planning and management service which is false, misleading or deceptive.

The Department explained that it relies upon Section 1 of the Act as the statutory authority for Section 140.80(b) (former Section 8) of the rules. Section 1 of the Act states that the business of rendering financial planning and management services "is subject to regulation and control in the public interest."

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Despite the Department's argument to the contrary, the general prohibition of advertising for business outside the licensed office is clearly in excess of the Department's statutory authority. As noted above, Section 13 of the Act states that advertising may not be "false, misleading or deceptive." The Department has made no showing that the activities subject to prior approval by the Department pursuant to Section 140.80(b) (former Section 8) of the rules are per se "false, misleading or deceptive." Further, the Department's reliance upon Section 1 of the Act is misplaced in this instance. To allow the Department to promulgate this rule based upon general policy language of Section 1 would be unwarranted. To allow this interpretation of Section 1 of the Act would allow the Department to rationalize almost any imaginable type of restraint of licensees.

Advertising is form of commercial speech which enjoys protections under the First Amendment to the United States Constitution. This particular rule is overbroad in that it purports to prohibit all advertising, even that which cannot be constitutionally prohibited, unless such advertising is approved by the Department. A statute may not completely suppress the dissemination of truthful information about entirely lawful activity, Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, 425 U.S. 748 (1978). Of course, there is no constitutional right to disseminate false or misleading advertising, F.T.C. v. National Commission on Egg Nutrition, 517 F.2d 485 (24th Cir. 1975). The Department, to cure this constitutional defect, would have to develop criteria to be used in banning false, misleading, or deceptive advertising.

Therefore, the Joint Committee objects to Section 140.80(b) (former Section 8) of the rules because the section in its present form exceeds the Department's statutory authority and it is unconstitutional.

Rules and Regulations Governing the Execution and Enforcement of the Illinois Sales Finance Agency Act (38 Ill. Adm. Code 160)

Basis for Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

Section 160.230(m) (former Rule 23(m)) states:

All licenses not implemented by use within a period of six months after issue shall be forfeit unless a failure is proven to be for reasonable cause.

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A new application and payment of applicable fees is required after each such forfeiture.

The Department was asked to detail the statutory authority for this provision. The Department explained that it bases authority for the provision upon Section 13 of the Act which states in relevant part:

The Department may make and enforce such reasonable rules, regulations, directions, orders, decisions and findings as the execution and enforcement of this Act require....

The Department explained that reasonable cause is a judgmental decision by the Department. It was further stated that the burden of proof of reasonable cause is upon the licensee.

The Department advised that it believes that this provision is consistent with the purposes of Departmental regulation of Sales Finance Agencies. It was noted that conditions, financial and other, that were acceptable at the time of licensing, are susceptible to change and deterioration over a period of time. It believes that by having this 6 month requirement the Department can more closely monitor the financial positions of licensees.

However, it appears that the Department lacks the statutory authority to revoke a license in this manner. Section 8 of the Act states that, "...a license may be denied, suspended or revoked by the Department on any of the grounds listed in Sections 8.1 to 8.13." However, no provision is made for revocation based on failure of a licensee to implement the license within six months.

In addition, Section 10 of the Act provides notice requirements in proceedings to revoke or suspend a license. The section states:

The Department shall, after 5 days notice by certified mail, return receipt requested, send to the licensee at the address set forth in the license, stating the contemplated action and in general the grounds therefore and the date, time and place of a hearing thereon, and after providing the licensee with a reasonable opportunity to be heard prior to the action, suspend or revoke any license issued hereunder if it finds that the licensee has violated any of Sections 8.1 through 8.12 or Section 9.

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Despite the fact that Section 160.230(m) (former Section 23(m)) refers to a "forfeiture," the effect of the rule is to revoke a license contrary to the causes listed in the Act, or the procedure for revocation. The statute sets forth a number of specific causes for revocation, none of which is lack of implementation. The courts have held that, "[w]here statute... providing for revocation...specified causes for which licenses might be revoked, they could not be revoked for any other cause." Kaeseberg v. Ricker, 177 Ill. App. 527, (1913).

In addition to attempting, impermissibly, to expand the causes for revocation by rulemaking, the rule attempts to circumvent the notice and procedural requirements relative to revocation as determined in Section 10. Therefore, the Joint Committee objects to this rule.

Rules and Regulations Governing the Execution and Enforcement of the Uniform Disposition of Unclaimed Property Act and Related Statutes

Basis for Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

The second paragraph of Rule 1 provides:

Holders reporting money shall deduct from such total property reported, the actual costs of mailing as required by Section 11(e) of the Uniform Disposition of Unclaimed Property Act, which shall consist of the costs of envelopes, the cost of postage stamps, the cost of stationery, the cost of addressing the envelope actually incurred, plus the cost of mailing the remittance to the Director - ONLY. No other costs of mailing and remittance shall not exceed \$1.00 on any one account remitted to the Department.

The only portion of the Uniform Disposition of Unclaimed Property Act which allows the deduction of mailing costs from abandoned property in Section 13 (Ill. Rev. Stat., ch. 141, par. 113), which provides in pertinent part, as follows:

Every person who has filed a report as provided by Section 11 shall within 20 days after the time specified in Section 12 for claiming the property from the holder pay or deliver to the Director all abandoned property specified in the report after first deducting therefrom actual costs of mailing.

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It appears that the statutory provision only allows a holder to deduct the actual cost of mailing the property to the Director. The Department was asked to clarify the second paragraph of Rule 1 so that it complied with the statutory authority for these rules. The Department declined to modify the rule stating that it was not consistent with the statute.

Despite the Department's assertion to the contrary, it appears that the definition of "actual costs of mailing" contained in Rule 1 is overly broad. By allowing the addition of the cost of addressing the envelopes the rule appears to allow holders to write off a portion of their secretarial time in addition to mailing costs. This would appear to be an overly broad interpretation of the statutory allowance, and, therefore, the Joint Committee objects to this rule.

Rules and Regulations Governing the Execution and Enforcement of the Illinois Uniform Disposition of Unclaimed Property Act and Related Statutes

Basis for Review: Five Year/Industry and Labor/Business Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

Rule 4 of the Department of Financial Institutions' "Rules and Regulations Governing the Execution and Enforcement of the Illinois Uniform Disposition of Unclaimed Property Act and Related Statutes" states in relevant part: ". . . any qualified person designated in writing by the Director may hold a hearing concerning the claim of any person claiming an interest in any property delivered to the State under this Act."

Section 20 of the Act is entitled "Determination of Claims." The section states, "The Director shall consider any claim filed under this Act and may, in his discretion, hold a hearing and receive evidence concerning it." (emphasis added). Section 20(a) also states:

The Director shall prepare a finding and a decision in writing on each hearing, stating the substance of any evidence heard by him, his findings of fact in respect thereto, and the reasons for his decision. (emphasis added)

Section 20 of the Act has no language authorizing the appointment of a hearing officer. One need only look to the emphasized portion of Section 20 noted above in order to see that the plain language of the provision makes it evident that it was contemplated that the Director would preside at hearings.

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The Department was asked to cite the authority by which it allows the appointment of hearing officers. The Department cited Section 26 of the Act. Section 26 states: "The Director is hereby authorized to make necessary rules and regulations to carry out the provisions of this Act." This language, however, is not sufficient authority for the Director to appoint a hearing officer.

DEPARTMENT OF INSURANCE

Section 101.30(d) and Section 101.40(f) of the Rules of the Department of Insurance

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Department of Insurance

Joint Committee Objection: August 17, 1983

Specific Objection:

Section 101.30(d) of the Department of Insurance Rules states in part:

Marine and/or transportation policies may cover under the following condition:

(d). Bridges, tunnels and other instrumentalities of transportation and communication (excluding buildings, their furniture and furnishings, fixed contents and supplies held in storage) unless fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion are the only hazards to be covered. Piers, wharves, docks and slips, excluding the risks of fire, tornado, sprinkler leakage, hail, explosion, earthquake, riot and/or civil commotion. Other aids to navigation and transportation, including dry docks and marine railways, against all risks.

The foregoing includes:

- 1) Bridges, tunnels, other similar instrumentalities, unless fire, lightning, windstorm, sprinkler leakage, hail, explosion, earthquake riot or civil commotion are the only perils to be covered.
- 2) Piers, wharves, docks and slips, but excluding the risks of fire, lightning, windstorm, sprinkler

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leakage, hail, explosion, earthquake riot or civil commotion.

Section 101.40(f) states:

Unless otherwise permitted, nothing in the foregoing shall be construed to permit MARINE OR TRANSPORTATION POLICIES TO COVER:

- f. Risks of fire, windstorm, sprinkler leakage, earthquake, hail, explosion, riot, and/or civil commotion on buildings, structures, wharves, piers, docks, bulkheads and sheds and other fixed real property on land and/or over water, except as hereinbefore provided.

An examination of Section 101.30(d) shows that the language appearing after the phrase "The foregoing includes" is substantially identical to the material which appears immediately preceding the phrase. Section 101.40(f) prohibits coverage for certain risks. This provision repeats, in slightly altered form, the same subject matter covered in two ways in Section 101.30(d).

Under the mandate of Section 7.05 of the Illinois Administrative Procedure Act, it is the responsibility of the Joint Committee to reduce the bulk of rules and remove unnecessary repetitions. The material contained in Section 101.30(d) and Section 101.40(f) are redundant and worded in such a manner as to confuse the reader. The actual intent of the Department as to exactly what can and what cannot be insured is lost in a labyrinth of words and phrases such as "unless otherwise permitted" and "except as hereinbefore provided."

Therefore the Joint Committee objects to Section 101.30(d) and Section 101.40(f) of the Department of Insurance because the language of the rules is redundant and lacks clarity.

Section 752.40(d) of the Rules of the Department of Insurance

Basis of Review: Five Year/Industry and Labor/Business Regulation: Department of Insurance

Joint Committee Objection: August 17, 1983

Specific Objection:

Section 752.40(d) of the Rules of the Department of Insurance states:

To assist the Director in gathering information, the Director may designate one or more

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advisory organizations to gather, compile and file information. This information may be made available, subject to rules adopted by the Director, to companies, advisory organizations, and others.

This portion of the rule substantially repeats language found in Section 466 of the Insurance Code, which states in part:

All such compilations, whether made by the Director or by any designated rating organization or other agency, shall be made available, subject to reasonable rules promulgated by the Director, to companies and rating organizations.

According to the Department, the compilations of the data are available as public records, but the separate information from individual companies is not available. It is the policy of the Department to disseminate this compiled information through a cooperative effort on behalf of the organizations through voluntary cooperation. The Department has not had to adopt rules concerning the availability of this information.

The Department's practice of utilizing voluntary effort is in direct contradiction of its own rules and the statute which it is supposed to implement. Both the rule and statute call for the existence of rules to cover availability of the compiled information. One of the criterion for the review of existing rules by the Joint Committee is whether the rules comply with the legislative intent on which it is based, 1 Ill. Adm. Code 250.1400(a)(2). The legislative intent of the quoted statute is clear -- compilations shall be made available subject to rules made by the Director. There has been no compliance with the apparent statutory mandate for rules. Another criterion for review of existing rules is whether the rules are accurate and current in relation to agency operations and programs, 1 Ill. Adm. Code 250.1400(d)(2). The practice of the Department is not in line with the promulgated policy in Section 752.40(d). The Joint Committee objects to Section 752.40(d) of the Department of Insurance because the rule neither complies with the legislative intent on which it is based, nor does the rule accurately reflect Departmental policy.

Part 753 of the Rules of the Department of Insurance

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Department of Insurance

Joint Committee Objection: August 17, 1983

Specific Objection:

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Part 753 of the Rules of the Department of Insurance concerns the filing of policy and endorsement forms by advisory organizations. Section 753.20(b) states in its entirety:

In a policy in which contingent liability of members or subscribers is provided for, the provision therefor shall be plainly stated in each policy with prominence equal to the indemnifying clause. Any insurer may also print upon the policy such regulations or provisions as may be required by its home State or such as may be appropriate to or required by its form of organization or plan of operation. There may be substituted for the word "company" where it appears in the policy, another term more accurately descriptive of the insurer.

It is the position of the Department that the insurer has the option of whether or not to print the regulations required by its home state.

It is also the practice of the Department that regulations or provisions which are required by the insurer's home state but are not applicable in Illinois must be identified within the insurance policy form as to the state or states to which they apply. All regulations or provisions required by the State of Illinois must be included within the policy form. These practices of the Department are not listed in the requirements for policies in Part 753. These practices apparently make up unpromulgated policies of the Department of Insurance.

One of the criterion for the review of existing rules by the Joint Committee is whether rules are accurate and current in relation to agency operations and programs, 1 Ill. Adm. Code 250.1400(c)(2). All of the relevant policy of the Department concerning requirements for policy forms subject to Rule 7A.03 are not contained in the rule. The Joint Committee objects to Part 753 of the Department of Insurance because the rule does not accurately reflect Departmental policy.

Section 754.10(h) of the Rules of the Department of Insurance

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Department of Insurance

Joint Committee Objection: August 17, 1983

Specific Objection:

Section 754.10(h) of the Rules of the Department of Insurance provides that a company making a filing must maintain documentary data for rate changes in its files so that it will be available for review by the Department's Property and Casualty

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Evaluation Section. The data is subject to Section 133 of the Insurance Code, which covers preservation of records. Section 133 is implemented by Part 901 of the Department of Insurance. Both Section 133 and Part 901 are applicable to all companies. A company can destroy records after complying with Part 901 regarding approval of destruction.

The Department has not reviewed documentary data in support of rate changes since the expiration of Article XXX $\frac{1}{2}$ of the Insurance Code. Article XXX $\frac{1}{2}$ expired in 1971. The standards which the Department used in analyzing and reviewing documentary data were set forth in Article XXX $\frac{1}{2}$ prior to its expiration. The Department has no current use for the material maintained.

One of the criteria for the review of rules by the Joint Committee is whether the rules are accurate and current in relation to agency operations and programs, 1 Ill. Adm. Code 250.1400(d)(2). Since the Department has no program for evaluating the material required to be maintained as records, there is no apparent need for this particular provision of the rule. The Joint Committee objects to Section 754.10(h) of the Department of Insurance because the rule is no longer accurate and current in relation to agency operations and programs.

Part 916 of the Rules of the Department of Insurance

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Department of Insurance

Joint Committee Objection: August 17, 1983

Specific Objection:

Part 916 of the Department of Insurance Rules was last revised effective December 1, 1975. The rule covers the required procedure for filing and securing approval of life insurance, annuity, and accident and health insurance forms. In the March-April, 1976, issue of "Illinois Insurance," the Department published an article which clarified the procedures set out in Part 916. The clarification added requirements for the filing of accident and health rates and substitution filings, requirements not found in the text of the rule. The clarifications contain such phrases as "must be accompanied by" and "must contain the following," phrases which indicate mandatory action on the part of the companies filing these forms.

This statement of general applicability appears to be a rule within the scope of Section 3.09 of the Illinois Administrative Procedure Act (IAPA). That this is labeled a "clarification" of a rule is immaterial. The statement sets policy.

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The clarification of Part 916 represents policy that lies beyond the rule itself. One of the criteria for review by the Joint Committee is whether a rule is accurate in relation to the operations of an agency, 1 Ill. Adm. Code 250.1400(d)(2). The rule does not represent all relevant policy of the Department. The Joint Committee objects to Part 916 of the Rules of the Department of Insurance because the rule is not accurate in relation to agency operations.

50 Ill. Adm. Code 919 of the rules of the Department of Insurance

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Department of Insurance

Joint Committee Objection: August 17, 1983

Specific Objection:

Part 919 (former Rule 9.19) of the Department of Insurance deals with the subject of claims practices. Part 919 lists seven activities to be considered improper practices or procedures for property and casualty companies.

On page 6 of the May-June 1981 issue of "Illinois Insurance," the Department published an article which declared that automobile insurance companies could no longer make piecemeal deductions from payments to the insureds for "dealer's prep" charges. These were charges individually allocated to "polish, shampoo, oil change, tune-up, touch up, etc." The Department notified all companies that this type of deduction shall be cited as a violation of Part 919 (former Rule 9.19) and that utilization of the catchall phrase "dealer's prep" to lower the amount of settlement to the named insured is construed as an unfair claims practice.

This involves the addition of another factor to the list of improper practices or procedures in Section 6(c) of Part 919 (former Rule 9.19). The Department, however, did not amend Part 919 (former Rule 9.19) to include this new factor. The Department has developed a written policy which is not embodied in a formally promulgated rule. Part 919 (former Rule 9.19) does not contain all current policy of the Department. The Joint Committee objects to Part 919 (former Rule 9.19) because the rule does not accurately reflect current Department policy.

Section 1451.90(I) of the Rules of the Department of Insurance

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Department of Insurance

Joint Committee Objection: August 17, 1983

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Specific Objection:

Section 1451.90(1) of the Rules of the Department of Insurance provides that the Director of Insurance may reject an application or suspend, revoke, or refuse to renew a variable contract agent license "upon any ground that would bar such applicant or such agent from being licensed to sell life insurance contracts in this State." The grounds for such action by the Department are found in Section 502 of the Insurance Code, and the Department stated that there are no additional grounds for suspension, revocation, or refusal of a license.

The Department has an option, therefore, of one of three actions in cases in which an existing license is involved. Under the authority of Section 502, the Department can suspend a license for up to 2 years or revoke a license. The current language of this section apparently gives the Department the option of taking no action whatsoever when faced with a situation involving the grounds found in Section 502 of the Code. The choice of action or inaction has a profound effect on the licensee and an indirect effect on the public. A direct reference in the rule to Section 502 would be appropriate, since it is the source of the grounds for regulatory action. If the practice of the Department is that all such transgressions are met with Departmental action, it would be appropriate to change "may" to "shall."

Section 4.02 of the Illinois Administrative Procedure Act requires that each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. Section 4.02 requires that the standards be stated as precisely and clearly as practicable under the conditions, to inform fully those persons affected. One of the criteria for the Joint Committee's review of existing rules is a determination of whether the rule includes adequate standards for the exercise of each discretionary power which is discussed in the rule, 1 Ill. Adm. Code 250.1400(a)(4). Section 1451.90(1) contains no standards at all to govern the discretion to act or not act or the discretion in deciding which action is appropriate. The Joint Committee objects to Section 1451.90(1) of the Department of Insurance because the rule lacks standards for the exercise of a discretionary power.

Section 2007.60(f) of the Rules of the Department of Insurance

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Department of Insurance

Joint Committee Objection: August 17, 1983

Specific Objection:

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Section 2007.60(f) (former Section 6(f) of Rule 20.07) of the Department of Insurance states in part:

No provision of this Rule shall prohibit the use of any policy provision which is required or permitted by statute.

The Department stated that Section 2007.60(f) (former Section 6(f)) was promulgated to recognize that subsequent to the effectuation of Part 2007 (former Rule 20.07), the legislature might enact a law which would preclude material presently contained in Part 2007 (former Rule 20.07). There are currently no inconsistencies between the rule and the statute.

This section is an attempt, according to the Department, to counteract any potential conflict between the rule and the statute. This provision, however, fails to recognize that the Department has an affirmative duty to ensure that its rules comply with the statutory authority on which they are based or which they are implementing. The realities of the legislative process are such that the Department will have ample opportunity to either engage in standard rulemaking before the effective date of legislation or to engage in emergency rulemaking to comply with that legislation which becomes effective immediately upon the signature of the Governor. It is to be assumed that the Department is cognizant of any proposed legislation that would affect its responsibilities or authority under the Illinois Insurance Code and other laws, so it cannot be said that statutory change could catch the Department unaware.

The Joint Committee objects to Section 2007.60(f) (former Section 6(f)) because there is unnecessary language in the rule which disregards the responsibility of the Department of Insurance to keep its rules in current compliance with statutory authority.

Part 2302 of the Rules of the Department of Insurance

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Department of Insurance

Joint Committee Objection: August 17, 1983

Specific Objection:

Section 2302.40(a)(8) of the Department of Insurance rules was adopted in violation of Section 5.01(b) of the Illinois Administrative Procedure Act. Section 2302.40(a)(8) appeared in the initial publication of Rule 23.02 in the Illinois Register. This section, Section 2302.40(a)(8), as originally proposed, read as follows:

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- (a) All Group Inland Marine insurance applications and certificates shall contain, in a type size to make it predominant, the following:

WARNING

PURCHASING THIS COVERAGE MAY
VOID OR LIMIT OTHER INSURANCE

On applications, the above described warning shall appear immediately above the space provided for the applicant's signature.

- (b) Upon approval of the Director of Insurance, the above warning may be modified if done so with substantially the same wording to convey the intent and purpose of the warning.

The written second notice added a requirement for "ink color" in the paragraph above the warning, made the warning itself more restrictive, and omitted entirely subparagraph (b).

The Joint Committee, at a meeting on the rule on April 13, 1981, heard testimony from the insurance industry opposing the rule as printed in the second notice. The Joint Committee, however, issued a letter of no objection to the Department on that date.

On June 8, 1981, the Department filed Rule 23.02 with the Secretary of State. The Department added back Section 2302.40(a)(8) dealing with the flexibility of language in the warning upon prior approval by the Director, and also added back the reference in the Summary and Purpose as agreed to with the Joint Committee staff.

The filing of Part 2302 of the rules with the addition of the language not included in the second notice violates Section 5.01(b) of the Illinois Administrative Procedure Act, which reads in part:

After commencement of the second notice period, no substantive change may be made to a proposed rulemaking unless it is made in response to an objection or suggestion of the Joint Committee.

The addition of this language was not in response to either objection or suggestion of the Joint Committee.

The position of the Department of Insurance is that the change is not substantive. It should be noted, however, that the addition of the language in Section 2302.40(a)(8) allows

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insurance companies to vary from the prescribed form of warning to be printed on the applications and certificates. This is a substantive change from the rule in the second notice which allowed no alternative warnings.

The Joint Committee on Administrative Rules objects to Part 2302 of the Rules of the Department of Insurance because the rule was amended without compliance with the Illinois Administrative Procedure Act.

Part 3109 of the Rules of the Department of Insurance

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Department of Insurance

Joint Committee Objection: August 17, 1983

Specific Objection:

Section 3109.30(a) of the Rules of the Department of Insurance prohibits

. . .any person from transacting business under an assumed name. . .other than the real name or names of the individuals transacting such business, unless such person or persons shall file with the County Clerk. . . an acknowledged certificate setting forth the name of the business and the names and addresses of all individuals conducting such business.

In the September-October 1980 issue of "Illinois Insurance," the Department stated that it had always adhered to a strict interpretation of Part 3109 to the point that if an individual (for example, John Doe) operated an agency under the name "John Doe Insurance Agency," the Department required the acknowledged Assumed Name Certificate from the County Clerk with the application for a broker license.

This interpretation was challenged by the industry by the argument that the name of an agency is not an assumed name if it includes the full name of the owner. The Department agreed and in "Illinois Insurance" it stated

Therefore, the Department has revised and liberalized its interpretation of Part 3109. Effective December 1, 1980, evidence of registration under the Assumed Name Act will no longer be required if the agency name includes at least the legal first and last name of the owner.

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If an agency is sold, however, and the new owner wishes to retain the original name, then evidence of proper registration of the assumed name would be required.

These interpretations of a rule by the Department are in themselves rules within the scope of Section 3.09 of the Illinois Administrative Procedure Act. The rule was not amended to convey the new interpretation by the Department. The Joint Committee objects to Part 3109 of the Department of Insurance because the rule is not current in relation to the operations of the Department.

Section 6201.30 of the Rules of the Department of Insurance

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Department of Insurance

Joint Committee Objection: August 17, 1983

Specific Objection:

Section 6201.30 of the Rules of the Department of Insurance currently states in part:

All trusts established and approved pursuant to the Act shall be subject to financial and/or performance examinations conducted by the Director of Insurance as often as he shall deem necessary.

The Department has not conducted any examinations as yet. In discussion the Department stated that it will conduct financial exams of the six existing trusts on a triennial basis to determine their ability to pay claims.

The Department also indicated that it will conduct performance examinations on a "need basis." The factors constituting a "need basis" are unspecified in the rule. The rule also fails to specify the timing of the exams.

Section 4.02 of the Illinois Administrative Procedure Act requires that each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power.

Section 6201.30 gives the Director the authority to conduct examinations as often as he deems necessary. There are no standards included in the statute or the rules for the exercise of this discretion. It appears, rather, that the Department has a policy but has not promulgated it as a rule.

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One of the criteria for review by the Joint Committee is whether the rules are accurate and current in relation to agency operations and programs, 1 Ill. Adm. Code 250.1400(d)(2). Section 6201.30 fails to include all of the policies of the Department regarding the examination of the subject trusts.

Constitutional Officers

OFFICE OF THE ATTORNEY GENERAL

Section 480.30(h) of the Charitable Trust Act Rules (14 Ill. Adm. Code 480)

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

According to the Illinois Charitable Trust Act (Ill. Rev. Stat., ch. 14, pars. 51-64), the Attorney General has the statutory duty to establish and maintain a registration list of trustees subject to this Act. Accordingly, Section 480.30(h) (former Rule 20) of the rules is one of the rules dealing with this registration process.

Section 480.30(h) (former Rule 20) states:

When a bank or trust company is trustee or co-trustee of a charitable trust, it shall upon the request of the Attorney General supply a schedule of assets with the registration statement. The Attorney General shall be notified of any changes in individual trustees.

The Attorney General's representatives were asked what standards guide the determination of whether or not to request a schedule of assets from a bank or trust company trustee under Section 480.30(h) (former Rule 20). They replied that the Attorney General's discretion determines whether financial information is required of banks and trust companies. They stated that if an investigation or complaint has been made, any question involving the amount of funds or the administration of these funds would be resolved by requiring the submission of financial information to document the proper handling of these funds.

When asked to add language incorporating the above explanation into the rule, in order to provide the standards and criteria used by the Attorney General in making this

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request, the Attorney General replied that no useful change can be made to this rule. It reflects, according to the Attorney General, his common law powers to obtain information on charitable trusts.

The Illinois Administrative Procedure Act (Ill. Rev. Stat., ch. 120, Section 4.02), states:

Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. Such standards shall be stated as precisely and clearly as practicable under the conditions, to inform fully those persons affected.

Since the Attorney General has not complied with Section 4.02 of the Illinois Administrative Procedure Act, the Joint Committee objects to Section 480.30(h) (former Rule 20).

Section 480.40(c) of the Charitable Trust Act Rules (14 Ill. Adm. Code 480)

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

Section 480.40(c) (former Rule 24) provided as follows:

Religious bodies and their affiliated agencies are exempt from the registration requirements of the Illinois Charitable Trust Act.

The Attorney General was asked to clarify the vague term "affiliated agencies." The Attorney General responded that affiliation with a religious organization is a factual question which must be resolved on the circumstances of a particular situation. The Attorney General stated that the legislature intended that the affiliated organizations not be required to register but did not define this term. This position seems to support, rather than defeat, an argument that interpretive rulemaking is appropriate.

Additionally, the Attorney General asserted that he exercises no discretion in determining whether or not something is an affiliated agency, but rather always takes the word of the religious body in determining whether or not an agency is affiliated. If that is in fact the policy of the Attorney General, it should be stated in the rule.

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It seems odd, however, that the Attorney General would accept any designation of any group by a religious body as an affiliated agency. To do so could in effect result in a failure on the part of the Attorney General to properly enforce the Act.

The Illinois Administrative Procedure Act (Ill. Rev. Stat., ch. 127, Sec. 4.02) indicates that any rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. Despite the Attorney General's assertions to the contrary, the Attorney General is exercising discretion regarding the term "affiliated agencies" by indicating that affiliation with a religious organization is a factual determination which must be resolved on the circumstances of a particular situation.

Given the fact that this discretion is present, the Joint Committee objects to this rule since there are no standards and criteria for the exercise of the Attorney General's discretion.

Section 400.30(b) of the Rules Governing the Illinois Solicitation Act (14 Ill. Adm. Code 400)

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

Section 400.30(b) (former Rule 47) states in pertinent part:

To register, a charitable organization must file in duplicate completed registration statements and the appropriate attachments, including a schedule of investments on the form provided by the Attorney General. The use of substitute forms or computer printouts may be approved in writing by the Attorney General upon a timely request.

The Attorney General was asked to define the criteria governing the decision whether or not to approve substitute forms. It was indicated that the National Association of Attorneys General has been working towards a uniform annual report for charitable organizations and also the possibility of a uniform registration information form. The Attorney General advised that if these efforts are successful, a uniform registration form would be acceptable in lieu of completing an Illinois registration statement.

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It was noted that any substitute form to be acceptable, must provide substantially the same information that the Attorney General's form provides and be in a readable format.

The Attorney General has, however, declined to modify Section 400.30(b) (former Rule 47) to include these standards and criteria governing his exercise of discretion. Section 4.02 of the Illinois Administrative Procedure Act, (Ill.Rev.Stat., ch.127, par.1001-1021) states:

Each rule which implements a discretionary power to be exercised by an agency shall include standards by which the agency shall exercise the power. Such standards shall be stated as precisely and clearly as practicable under the conditions, to inform fully those persons affected.

Based upon the refusal of the Attorney General to modify Section 400.30(b) (former Rule 47) to comply with Section 4.02 of the Illinois Administrative Procedure Act, the Joint Committee objects to Section 400.30(b) (former Rule 47) of the Attorney General's rules on the Illinois Solicitation Act.

OFFICE OF THE SECRETARY OF STATE

Rule 1 of the "Procedures for Construction Projects for the Office of the Secretary of State"

Basis of Review: Five Year/Government Management: State Buildings Construction and Maintenance

Joint Committee Objection: April 19, 1983

Specific Objection:

Rule 1 describes the scope of the "Procedures for Construction Projects for the Office of the Secretary of State." The rule explains that the Secretary adopted these rules to establish its procedures for construction projects in accordance with the Illinois Purchasing Act (Ill. Rev. Stat. 1981, ch. 127, par. 132.1 et seq.). Rule 1 further provides that the "Purchasing Act shall govern in the event of conflict with any of the rules and regulations hereinafter set forth."

That part of Rule 1 which states that the Purchasing Act shall control insofar as the Secretary's rules may conflict with the Act is objectionable for a number of reasons. First, it is unnecessary since it merely restates an obvious legal principle. Second, and more importantly, this provision may be confusing to those subject to the rules since it can be interpreted as suggesting that certain rules may conflict with the Act.

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Representatives of the Secretary have indicated that they know of no rule which conflicts with the provisions of the Purchasing Act, but have indicated that this provision would be useful in the event that an amendment to the Act or a court interpretation of the Act resulted in a conflict. This argument ignores the fact that, should the Act be amended or a court interpretation be issued which would affect the validity of the rule, it is the responsibility of the Secretary to amend the rule to conform it.

The difficulty with this type of provision can be seen in the case of Illinois Bell v. Alphin, (60 Ill. 2d 350, 326 N.E. 2d 737 (1975)), in which the Department of Revenue asserted, many years after enactment of a rule, that court interpretations had changed the state of the law to the extent that the rule was no longer valid. The Department then found itself arguing, in court, that the rule was invalid because it conflicted with the statute. This put the taxpayer, who relied on the rule of the Department, at a disadvantage that could exceed \$125 million. Had the Department fulfilled its responsibility to update the rule, the extensive litigation that followed might have been avoided.

For these reasons, the Joint Committee objects to that part of Rule 1 dealing with a conflict between the Illinois Purchasing Act and the Secretary's rules adopted pursuant to the Act.

Date Agency Response Received: August 22, 1983

Nature of Agency Response: Agreed to Initiate Rulemaking

Rules 14 and 15 of the "Procedures for Construction Projects for the
Office of the Secretary of State"

Basis for Review: Five Year/Government Management: State
Buildings Construction and Maintenance

Joint Committee Objection: April 19, 1983

Specific Objection:

Rules 14 and 15 govern the preparation, advertisement, and review of bids by the Secretary. Rule 14 provides that "bid documents" will be prepared by the architect/engineer, and that "the project will be advertised for bids by the Office of the Secretary of State, Director of Purchasing." Rule 15 provides, "Bids will be opened at a time and place determined by the Office of the Secretary of State, Director of Purchasing, and reviewed by the architect/engineer and the Department of Physical Services."

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Rules 14 and 15 are the Secretary's only rules covering the solicitation of bids. However, Section 6(b) of the Illinois Purchasing Act (Ill. Rev. Stat. 1981, ch. 127, par. 132.6(b)) provides:

The rules and regulations required by Section 5 of this Act...shall provide...
(t)hat solicitation for bids be in conformance with accepted business practices and the method of that solicitation shall be set out in detail.

Rules 14 and 15 neither require that bidding parties conform to accepted business practices nor set out in detail the solicitation procedures. The rules are so lacking in detail that the Joint Committee objects to Rules 14 and 15.

Date Agency Response Received: August 22, 1983

Nature of Agency Response: Agreed to Initiate Rulemaking

Rule 15 of the "Procedures for Construction Projects for the Office of the Secretary of State"

Basis for Review: Five Year/Government Management: State Buildings Construction and Maintenance

Joint Committee Objection: April 19, 1983

Specific Objection:

Rule 15 provides, "Bids will be opened at a time and place determined by the Office of the Secretary of State, Director of Purchasing...."

Section 6(c) of the Illinois Purchasing Act (Ill. Rev. Stat. 1981, ch. 127, par 132.6(c)) states:

The rules and regulations required by Section 5 of this Act...shall provide...
(t)hat proposals shall be publicly opened at the day and hour and at the place specified in the solicitations for bids.

Since Rule 15 does not comply with the directive of Section 6(c), the Joint Committee objects to the rule.

Miscellaneous Agencies

COMMISSIONER OF BANKS AND TRUSTS COMPANIES

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Sections 4.01(e), 4.02(e), and 7.01(f) of the Rules on Electronic Fund Transfers

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

Section 4.01(e) of the rules of the Office of the Commissioner of Banks and Trust Companies' rules on Electronic Fund Transfers states: "Each notice filed with the Commissioner shall be accompanied by a reasonable fee to cover the expense of administering this section." (emphasis added) Section 4.02(e) of the rules states that each notice of use of an automatic teller machine shall be accompanied by a "reasonable fee."

In each instance, the Commissioner was asked the statutory authority for the fee, and the amount of the fee. The Commissioner advised that \$200 is collected in the case of Section 4.01(e) and \$25 pursuant to Section 4.02(e). The Commissioner explained that the statutory authority relied upon for the imposition of these fees is Section 5-100 of the Act and Section 48 of the Illinois Banking Act.

Section 5-100 of the Electronic Fund Transmission Facility Act is a general grant of authority to the Commissioner to administer the Act and to promulgate necessary rules and regulations. Section 48 of the Illinois Banking Act is that part of the Act granting powers to and imposing duties upon the Commissioner.

Section 7.01(f) of the rules states that in order to defray the cost and expense of processing notices of intent to deploy point of sale terminals, "each notice shall be accompanied by a reasonable fee." The Commissioner was asked to provide the statutory authority for this fee, and the amount of the fee. The Commissioner cited as statutory authority, Sections 5-100, 8-100, and 8-102 of the Act. Section 5-100 is a general grant of rulemaking authority to the Commissioner. Sections 8-100 and 8-102 both address the subject of point of sale terminals, but neither section states the dollar amount of the fee to be charged, and of course, neither do the rules.

The present forms of these sections, are an unwarranted attempt to exceed the Commissioner's statutory authority in that there is very clearly no statutory authority for imposition of any fees. Without more, a general grant of rulemaking authority does not constitute authority for imposition of fees. Therefore, the Joint Committee objects to Sections 4.01(e) and 4.02(e) and 7.01(f) of these rules.

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CAPITAL DEVELOPMENT BOARD

Rule 301(e) of the Capital Development Board's "Rules and Regulations"

Basis for Review: Five Year/Government Management: State
Buildings Construction and Maintenance

Joint Committee Objection: April 19, 1983

Specific Objection:

Rule 301(e) states that where any of the rules is "inconsistent with an applicable law of this State, the latter shall govern." The Board was asked whether it is aware of any provisions which are inconsistent with any State laws. The Board replied that it is aware of no inconsistency between its rules and State law, but that it prefers to retain this provision in case such a situation should arise.

The rule appears objectionable for two reasons. First, the rule states the obvious rule of law that statutory provisions control over rules. Second, and more importantly, it fails to recognize the responsibility of the agency to keep its rules current in relation to statutory provisions. Recognition of that responsibility is central to an efficient regulatory code. Failure to keep rules and regulations current in terms of law can lead to such unfortunate results as the situation leading to Illinois Bell v. Allphin, which involved over 10 years of litigation between the State and a regulated corporation. In that case, the agency took the position that its rules, which clearly awarded a tax exemption, were invalid because they were inconsistent with a statutory provision. Had the agency recognized its responsibility to keep its rules current in relation to the controlling law, over 10 years of litigation would have been avoided.

The responsibility and the expertise for keeping the rules current in relation to the statutes is that of the Board. The affected public should not be burdened with the responsibility of interpreting the statutes and the rules, and determining whether any conflict exists.

Accordingly, the Joint Committee objects to Rule 301(e) because it is unnecessary, and because it fails to recognize the responsibility of the Board to keep its rules current in relation to statutes.

Date Agency Response Received: Failed to Respond

Nature of Agency Response: Refusal to Meet Objection

Rules 601-611, 708-710, and 906-907 of the Capital Development Board's
"Rules and Regulations"

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Basis for Review: Five Year/Government Management: State
Buildings Construction and Maintenance

Joint Committee Objection: April 19, 1983

Specific Objection:

The Capital Development Board rules require that contractors, architects/engineers, and insurance and surety companies be "prequalified" before doing business with the Board. (See Rules 501, 701, and 901.) Prequalification involves submitting to the Board specified information, which may include certified financial statements, industry financial ratings, and a disclosure of firm ownership. The Board uses this information to determine the firm's financial responsibility and that the firm is free from any conflict of interest which would prevent its receipt of State contracts.

Prequalification is therefore a "license" under Section 3.04 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par 1003.04). That section defines "license" as "any agency permit, certificate, approval, registration, charter, or similar form of permission required by law...." Prequalification is a form of Board certification entitling the contractor, architect/engineer, or insurance or surety company to eligibility for Board business. This certification, moreover, is required by law. Prequalification is required not only by the applicable Board rule, but in the case of contractors and architects/engineers, is also required by Section 6(a-1) of the Illinois Purchasing Act (Ill. Rev. Stat. 1979, ch. 127, par. 132.6(a-1)).

The Illinois Administrative Procedure Act sets strict procedures for the suspension of licenses. Section 16(c) of the Act provides:

No agency shall revoke, suspend, annul, withdraw, amend materially, or refuse to renew any valid license without first giving written notice to the licensee of the facts or conduct upon which the agency will rely to support its proposed action, and an opportunity for hearing in accordance with the provisions of this Act concerning contested cases.

Sections 10 through 14 of the Act (Ill. Rev. Stat. 1979, ch. 127, pars. 1010-1014) set the detailed procedures governing the adjudication of contested cases. These required procedures include, among others, written notice of the opportunity for a hearing at which the right to counsel exists (Section 10); the preservation of a record of the case, which includes the recording of all oral proceedings (Section 11); a hearing which observes the rules of evidence and the right to

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cross-examination of opposing witnesses (Section 12); a proposal for decision to be submitted to the parties for written exceptions prior to the rendering of a final decision (Section 13); and a final decision stating findings of fact and conclusions of law (Section 14).

The Board's rules governing the suspension of prequalification (Rule 601-611 (contractors); 708-710 (architects/engineers); and 906-907 (insurance and surety companies)) do not extend to a prequalified party threatened with suspension the various procedural rights required by the Illinois Administrative Procedure Act, as set forth above. The basic format of the Board's rules requires the Executive Director to appoint an "evaluation committee" composed of Board employees to review the conduct of the prequalified party. The committee, after notice to the affected party, holds an informal hearing at which the party can appear and contest the suspension. After the hearing, a recommendation regarding suspension is made to the Executive Director, who in turn makes a recommendation to the Board. At the Board's next regular meeting, the affected party may appear and contest the suspension. The Board then renders a decision.

Although the Board's rules do provide for some type of notice and an opportunity to contest a suspension, they do not meet the detailed procedural requirements of the Illinois Administrative Procedure Act. The Act provides, moreover, that "a decision by an agency in a contested case...shall be void unless the proceedings are conducted in compliance with the provisions of this Act relating to contested cases...." (Ill. Rev. Stat. 1979, ch. 127, par. 1014) For the foregoing reasons, the Joint Committee objects to the Board's rules governing suspension of prequalified parties.

Date Agency Response Received: Failed to Respond

Nature of Agency Response: Refusal to Meet Objection

Rule 504 of the Capital Development Board's "Rules and Regulations"

Basis for Review: Five Year/Government Management: State Buildings Construction and Maintenance

Joint Committee Objection: April 19, 1983

Specific Objection:

Rule 504 provides, in part, as follows:

In making all determinations with regard to certified financial statements, the Board shall be guided by the Auditing Standards

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issued by the American Institute of
Certified Public Accountants.

When asked to include a more detailed reference to the "Auditing Standards issued by the American Institute of Certified Public Accountants," the Board explained that the Auditing Standards are simply ten basic principles which accountants observe in performing audits. The Board declined to include a more specific reference, or to otherwise comply with the dictates of Section 6.01 of the Illinois Administrative Procedure Act, which specifies requirements for filing of materials incorporated by reference into rules and regulations, because the Board does not feel that these standards are being incorporated by reference into the rules.

The Board's position is somewhat difficult to understand. It is clear, from reading the rules that the Board is, referring to the Auditing Standards without explicitly setting them forth, adopting those standards as its own, and putting the rulemaking power of the Board behind those standards. A violation of the standards is, in fact, a violation of the Board's rules.

Thus, those standards are the rules. As such, they are required to be filed pursuant to the IAPA. As an alternative to setting forth the standards in full, Section 6.01 of the IAPA provides an alternative method for compliance with the filing requirements. In the absence of compliance with one of the filing methods prescribed by the IAPA, Section 4(c) provides that no rule is valid or effective, nor may it be invoked by the agency for any purpose, until it has been filed pursuant to the requirements of the IAPA.

In view of the refusal of the Board to comply with the requirements of Section 6.01 regarding incorporation by reference, the Joint Committee objects to Rule 504.

Date of Agency Response Received: Failed to Respond

Nature of Agency Response: Refusal to Meet Objection

OFFICE OF THE SAVINGS AND LOAN COMMISSIONER

Section 400.660(b)(2) of Rules for Illinois Savings and Loans Act

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

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Section 400.660 (former Section 6 of the Rules and Regulations of the Office of the Savings and Loan Commissioner) deals generally with mobile home financing. Section 400.660(b)(2) (former Section 6(b)(2)) states specifically that:

The monetary obligation is secured by a mobile home to be located in a mobile home park or other semipermanent site within the association's regular lending area within 90 days after the financing, and occupied by the purchaser, or a relative of the purchaser. (emphasis added)

The rule states that as one of its requirements for granting of a mobile home loan that the mobile home be occupied by the purchaser, or a relative of the purchaser. The Commissioner contended that he has the statutory authority to mandate this requirement.

The Commissioner indicated that the reason for requiring that the purchaser or a relative of the purchaser occupy the mobile home is to prohibit financing speculative rental properties. The Agency stated that the restriction is deemed appropriate due to the manner in which mobile homes depreciate. The statutory authority for this provision, according to the Commissioner, is Section 7-1.2(b)(2) of the Act, which states that the Commissioner shall have the power:

"To establish such regulations as may be reasonable or necessary to accomplish the purposes of this Act."

It does not appear that this general grant of authority to the Commissioner would authorize the Agency to promulgate the rule here under consideration. This rule is a specific rule directed at a specific class of people. The statutory authority is a general grant of authority to the Commissioner to do those things generally as are necessary to accomplish the purposes of the Act. Therefore, the Joint Committee objects to the above emphasized portion of Section 400.660(b)(2) (former Section 6(b)(2)) of the rules as the necessary statutory authority for this rule is lacking.

Section 400.1030(a) of Rules for Illinois Savings and Loan Act

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

Section 5-16 of the Illinois Savings and Loan Act provides:

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An association may not at any one time hold, directly or indirectly, loans to any one corporation or person in a total amount equal to or in excess of 10% of the association's total withdrawable accounts or an amount equal to the total net worth of the association whichever is less. (emphasis added)

Section 400.1030(a) (former Section 3(a) of Article IX) of the rules states as follows:

An association may make unsecured loans and investments in capital stock of service corporations in an amount which in the aggregate, shall not exceed 5% of the association's total assets. An association that has met and maintained the net worth level(s) required for a savings and loan association the withdrawable capital of which is insured by the FSLIC may invest an additional fifty per cent (50%) of the excess net worth provided that in no event shall an association's maximum investment in service corporations exceed ten percent (10%) of its total assets.

Section 5-16 of Act and Section 400.1030(a) (former Section 3(a) of Article IX) of the rules obviously do not impose the same lending limitations. The limitation on lending to service corporations imposed in Section 400.1030(a) (former Section 3(a)) of the rules, could be construed to allow loans in amounts in excess of that allowed by the Act. Section 5-16 of the Act limits loans to individual persons or corporations on the basis of either a percentage of the association's total withdrawable accounts or the net worth of the association. However, Section 400.1030(a) (former Section 3(a)) of the rules limits loans to service corporations, a type of corporation within the definition of Section 5-16 of the Act, based upon percentages of the association's total assets.

It was conceded by the Commissioner that the limitation imposed by Article IX may be construed to allow an association to make loans to service corporations in excess of the limitation of Section 5-16. This could occur because of the difference between the amounts of total withdrawable accounts and net worth, and total assets. Total assets of an association, in accounting terms, are equivalent to the total of an association's liabilities plus capital. Withdrawable accounts are only one component of an association's liabilities, hence a smaller dollar amount than total assets. Therefore, it is possible that the allowable percentage of total assets that may be loaned to a service corporation could well be in excess of the limitation of

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Section 5-16, based upon total withdrawable accounts or net worth of an association.

The Commissioner noted that the rationale of Section 5-16 of the Act is the protection of the financial viability of an association. The lending limitation to an individual person or corporation was imposed in order that the inability of the borrower to repay a loan would not be of sufficient gravity to undermine the financial solvency of an association. Section 400.1030(a) (former Rule 3(a)) subverts this purpose embodied in Section 5-16 of Act by increasing the lending limit to service corporations and in the process increasing the chance of insolvency of an association by virtue of the insolvency of a borrower.

While it can be argued that Section 5-16 of the Act must be complied with notwithstanding the provisions of the rules, the wording of the rule, without reference to the statutory limitations, renders the exact requirements vague and subject to erroneous interpretation.

Therefore, the Joint Committee objects to Section 400.1030(a) (former Section 3(a) of Article IX of the Rules of the Savings and Loan Commissioner) because the section impermissibly expands the statutory limitation on loans to service corporations imposed by Section 5-16 of the Illinois Savings and Loan Act.

Section 400.1760(d) of Rules for Illinois Savings and Loan Act

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

Section 400.1760(d) (former Section 26(d)) of the Rules for Illinois Savings and Loan Act states as follows:

The Commissioner, may, as part of said Order, require any party to the proceeding to pay part or all of the costs of the Hearing, including but not limited to: witness fees; court reporter fees; Hearing Officer fees; and cost of the transcript.

The Commissioner was asked to detail the standards and criteria governing his discretionary power to require any party to pay all or part of the costs of the hearing. It was explained that the intent of this section is to allow the Commissioner to assign costs to a party to a hearing where the Commissioner determines that the party either prompted or

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delayed the hearing for frivolous or specious reasons. It was indicated that to date the Commissioner has not exercised this power to divide costs among the parties.

The Commissioner declined to modify this section to detail the standards and criteria to be used in determining whether or not to assess costs. Section 4.02 of the Illinois Administrative Procedure Act requires that standards and criteria for the exercise of discretionary power shall be detailed in the rule granting that power. Therefore, the Joint Committee objects to Section 400.1760(d) (former Section 26(d)) of these rules.

Article XV of Rules on Mortgage Bankers

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

Section 9(f) of the Office of the Savings and Loan Commissioner's Rules on Mortgage Bankers (Article XV) requires the Commissioner to hold a hearing "...whenever, in the opinion of the Commissioner, a satisfactory resolution of a complaint has not been or will not be reached."

The Commissioner was asked what standards and criteria were used in determining whether or not to hold a hearing. It was indicated that the basic criterion would be the Commissioner's determination that more information is required than that provided by the licensee who is the subject of the complaint; i.e., lack of cooperation by such licensee. The Commissioner, however, declined to modify the rule to insert standards and criteria governing the exercise of discretion into the rule.

Section 4.02 of the Illinois Administrative Procedure Act, directs that, "Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power."

Therefore, since the Commissioner has failed to comply with the clear requirement of the Illinois Administrative Procedure Act, the Joint Committee objects to this rule.

Section 10(Z)(4) of Rules on Mortgage Bankers

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

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Specific Objection:

Subsection 10(Z)(4) of the Rules on Mortgage Bankers of the Office of the Savings and Loan Commissioner provides as follows:

The Commissioner, may, as part of the Commissioner's Order, require any party to the proceeding to pay part or all of the costs of the Hearing, including but not limited to: witness fees; court reporter fees; Hearing Officer fees; and the cost of the transcript, as set forth at subsection (BB) hereafter.

The Commissioner was asked to describe the standards and criteria used in determining whether or not to impose costs on a party to a hearing. The Commissioner advised that to date, three public hearings have been conducted concerning various licensees' five-year Illinois Residential Foreclosure Rates. It was stated that no hearing officer was appointed, and that the Commissioner conducted those hearings. It was indicated that in those instances the requirement of payment of costs by parties was waived by the Commissioner, because the expenses were minimal.

The Commissioner has declined to modify the rule to explicitly state those standards and criteria used in determining whether or not to assess costs against any party to a hearing. Section 4.02 of the Illinois Administrative Procedure Act states that, "Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power."

Therefore, since the Commissioner has failed to comply with what is a clear requirement of the Illinois Administrative Procedure Act, the Joint Committee objects to this rule.

ILLINOIS SAVINGS AND LOAN ADVISORY BOARD

Article II, Section 7 of the "Rules and Regulations of the Illinois Savings and Loan Advisory Board"

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

Article I, Section I of the rules of the Illinois Savings and Loan Board states: "The foregoing procedural rules apply to

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all appeals of the Savings and Loan Advisory Board from the decision(s) of the Commissioner of Savings and Loan."

The Illinois Savings and Loan Board is a separate and distinct entity from the Illinois Savings and Loan Commission. As indicated above, the Board has the power to review decisions of the Savings and Loan Commissioner. Additionally, to expedite this review process, the Board pursuant to Article I of the rules may appoint a hearing officer to hear an appeal.

The rule under consideration, Article II, Section 7, deals with a discretionary power of the hearing officer. Article II, Section 7 states in relevant part:

When, in the judgement of the Hearing Officer, prompt decision is necessary to prevent detriment to the public interest or unusual delay or expense, the Hearing Officer may refer the ruling promptly to the Board and notify the parties either by announcement on the record or by written notice if the hearing is not in session. Such referral is strictly within the Hearing Officer's discretion.

Paragraph 3 of Article II, Section 7, deals with interlocutory appeals to the Board during the pendency of a hearing. It vests power solely in the hearing officer to determine when an interlocutory appeal is warranted. The only standards and criteria explicitly governing the hearing officer's discretion are contained in the rather vague phrase "...detriment to the public interest or unusual delay or expense." These concepts do not, however, provide any concrete or meaningful guidelines for the exercise of the hearing officer's discretion. Further, the section states that such referral to the Board is "...strictly within the Hearing Officer's discretion."

The Board has agreed to omit the last sentence of this paragraph, but has not provided any clarification of the standards and criteria governing the hearing officer's discretion. Section 4.02 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1004.02) requires that any rule which implements a discretionary power by an agency include the standards by which the agency shall exercise the power, and that the standards be stated as precisely and clearly as practicable.

Therefore, the Joint Committee objects to Article II, Section 7, paragraph 3 because it does not provide adequate standards to govern the exercise of the power of the hearing officer.

Article VI, Section 1, of the "Rules and Regulations of the Illinois Savings and Loan Advisory Board"

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Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

Article VI, Section 1, of the "Rules and Regulations of the Illinois Savings and Loan Advisory Board" states in relevant part as follows:

In addition to those duties previously described, he shall have all the powers necessary to conduct a fair hearing in a propitious and orderly manner including (but not limited to) the power to:

This section purports to delegate to the hearing officer certain additional powers not previously granted in the rules. This language is an extremely broad grant of authority to the hearing officer.

The only standard or guideline governing this exercise of the discretion of the hearing officer is the "propitious and orderly manner" phrase. This is not specific enough to comply with the Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1004.02.), which requires that any rule which implements a discretionary power by an agency shall include the standards by which the agency shall exercise power, "stated as precisely and clearly as practicable under the circumstances." (emphasis added)

The Board believes that to omit this language would unduly limit the hearing officer's power. This response fails to address the fact that Section 4.02 of the Illinois Administrative Procedure Act must be complied with even though there might be an inconvenience to the agency wrought by compliance.

The Joint Committee objects to the above quoted portion of Article VI, Section 1 of the rules because it does not provide adequate standards to govern the discretionary power of the hearing officer.

Article IV(d) of the "Rules and Regulations of the Illinois Savings and Loan Advisory Board"

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Objection: August 17, 1983

Specific Objection:

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Article IV(d) of the "Rules and Regulations of the Illinois Savings and Loan Advisory Board" states as follows:

Any admission made by a party pursuant to request under this rule is for the purpose of the pending action only. It does not constitute an admission by him for any other purpose and may not be used against him in any other proceeding.

The Board was asked to cite the specific grant of statutory authority for this purported grant of immunity. The Board responded that it is not felt that there is any need for specific statutory authority for this provision. The Board is relying upon its general grant of rulemaking authority as the basis of this rule.

The Savings and Loan Advisory Board has as one of its primary functions: "To consider, hold public or private hearings, and act upon appeals from any order, decision or action of the Commissioner by an aggrieved person except as otherwise provided in this Act." Pursuant to this statutory direction the Board has promulgated hearing rules. However, there is no statutory authority granting the Board the power to grant immunity to those appearing before it in the course of the Board's deliberations.

It appears unclear how the Board is able to extrapolate from a general grant of rulemaking authority to a rule which appears to be a sweeping grant of immunity. The language of the rule states that admissions may not be used against a party "in any other proceeding." This would appear to mean that such an admission could be not used against a person in a civil or criminal proceeding in the circuit courts of the State of Illinois. A rule which purports to provide such a grant of immunity, absent clear statutory authority for its promulgation is unenforceable.

Therefore, the Joint Committee objects to this rule as it clearly exceeds the Board's statutory authority.



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Because the deadline for responding to many of these certificates of recommendation had not passed as of preparation of this Report, the date and nature of many agency responses are not included here.

Code Departments

DEPARTMENT OF FINANCIAL INSTITUTIONS

Collective Study of the Programs and Functions Relative to Depository Institutions

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

During the course of the review of the various rules classified under the subarea of "Financial Institutions," it became evident that many of the historic differences between the three major types of financial institutions--banks, savings and loans, and credit unions--have been eroded to the degree that major differences in the services provided by each type of institution are no longer quite so distinct as in the past.

Much of the impetus for modification of the powers of these institutions has come from the federal level. In the past two years there have been two congressional enactments that have significantly contributed to this blurring of the distinctions between banks, savings and loan associations, and credit unions. The first of these was the "Depository Institutions Deregulation Act of 1980," Public Law 96-221. The stated purpose of this Act was to facilitate the implementation of monetary policy, to provide for the gradual elimination of all limitations on the rates of interest which are payable on deposits and accounts, and to authorize interest-bearing transaction accounts,

In order to implement these purposes, the Act made a number of changes in the traditional differences between the 3 types of financial institutions. One of these changes provides for the phasing out, over a period of time, of what is known as "Regulation Q." Regulation Q was enacted to fix the maximum amounts of interest that could be paid on deposits by financial institutions. The original rationale of the regulation, which allowed savings and loan associations to pay higher interest rates than commercial banks, was to prevent disintermediation from savings and loan associations to commercial banks to protect the financial health of savings and loan organizations

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and the amount of money available for the home mortgage market. However, Regulation Q has been proven ineffective, in that when interest rates rose above the ceiling imposed by this regulation depositors took their money out of the savings and loans and invested it in money market funds. Hence, the disintermediation occurred despite, or maybe because of, Regulation Q. For these reasons, Congress mandated a phase out of this interest differential between savings and loan associations and commercial banks.

The second major provision of the Act permits insured depository institutions--commercial banks, savings and loan associations, and credit unions--to offer interest bearing transaction (or checking) accounts to individuals. Prior to this change, commercial banks were forbidden to pay interest on demand deposits.

The third major change found in this Act expands the asset powers of federal savings and loan associations. Traditionally, savings and loan associations were depositories and home mortgage lenders. This legislation gave federal savings and loan associations authorization to hold 10% of their assets in consumer loans, commercial paper, corporate debt securities and banker acceptances. They were also granted the power to offer trust services on the same basis as national banks.

The second federal enactment that impacts upon the distinction between the various types of financial institutions is the "Garn-St. Germain Depository Institutions Act of 1982," Public Law 99-320. The Act again addresses the elimination of interest rate differentials first addressed in the "Depository Institutions Deregulation Act of 1980." Section 326.327 of Title III of the Act eliminates the interest rate differential by January 1, 1984.

The Act continues to expand the powers of federal savings and loan associations to make them more similar to the powers possessed by commercial banks. Section 312 of Title III authorizes all federal associations to accept individual or corporate demand deposit accounts in connection with a corporate, commercial, agricultural or business loan relationship. Section 325 for the first time allows federal savings and loan associations to make commercial loans.

Finally, the Act allows depository institutions to offer a new account equivalent to, and competitive with, money market mutual funds.

Additional changes at the Federal level are continuing and blur the traditional distinctions between the types of institutions even further.

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All of the changes in the distinctions between the various types of federal financial institutions have a direct bearing on the relationships between financial institutions on the state level. State regulations generally mirror those federal changes not actually mandated to state institutions. This is necessary in order to keep state financial institutions competitive with their federal counterparts.

State chartered banks are regulated by the commissioner of Banks and Trusts. State chartered savings and loan associations are regulated by the savings and loan commissioner, and state chartered credit unions are regulated by the Department of Financial Institutions. The functions of these financial institutions have become more and more similar, and as noted previously, in many cases, the services provided by each type of institutions are the same.

One of the principal responsibilities of the Five-Year Review program of the Joint Committee is the elimination or phasing out of outdated, overlapping or conflicting regulatory jurisdictions. (Ill. Rev. Stat., 1981, ch. 127, par. 1007.08(b)(3)) Pursuant to this statutory direction, it would appear appropriate that the regulatory programs and procedures of the Commissioner of Banks and Trusts, the Commissioner of Savings and Loans, and the Department of Financial Institutions be studied in an effort to determine whether or not there are any programs or functions of the agencies that may be administered more effectively if consolidated. The expertise for such a study would seem to be particularly that of the three agencies now responsible for this regulation. The Joint Committee, therefore, recommends that the Commissioner of Banks and Trust Companies, the Office of the Savings and Loan Commissioner, and the Department of Financial Institutions undertake a collective study of the programs and functions relative to the depository institutions under their control, and make appropriate recommendations to the General Assembly and the Governor relative to consolidation of the functions to avoid overlapping regulatory jurisdictions and duplication of administrative efforts.

Examination of the Fee Structures Relative to the Consumer Credit Division

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

The Consumer Credit Division of the Department of Financial Institutions is engaged in the regulation and enforcement of 9

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separate statutes. Four of the Acts and related rules and regulations are examined in this report.

The administration of the Consumer Credit Division of the Department resulted in total revenue of \$1,282,362 for the fiscal year ending June 30, 1981. For the fiscal year ending June 30, 1980, the Consumer Credit Division generated revenue of \$1,248,687 while fiscal year 1979 produced revenue of \$1,079,706.

Total expenditures of the Consumer Credit Division for fiscal year 1981 were \$411,380. Expenditures for fiscal year 1980 were \$386,787, and \$352,649 for fiscal year 1979.

As noted, the Consumer Credit Division is responsible for the regulation and enforcement of nine separate statutes and related rules and regulations. It would appear beneficial for the Department to examine the fees generated by each of those nine Acts and rules in relation to the cost of regulation to determine whether or not there exists in each case a reasonable relationship between the revenue generated by these programs and the cost of regulation. The Joint Committee therefore recommends that the Department undertake such a study.

Seek Legislation Amending the Consumer Installment Loan Act

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

Deferment charges are the charges that may be assessed by a lender when a borrower wishes to postpone payment(s) on a loan for a specified period of time. Occasionally, due to illness or layoff from a job, or for other such reasons, a borrower may be unable to make a loan payment for a month or two. Rather than have the loan placed in default, the borrower can seek a deferment of the loan.

Section 110.100(m)(1) (former Section 10(m)) of the rules concerns charges for deferments of loan payments and the effect of deferments upon rebates for prepayment of a loan. Section 110.100(m)(1) (former Section 10(m)) requires:

The amount which may be charged for a one month's deferment is equal to the difference between the rebate that would be required for prepayment in full as of the scheduled due date of the deferred installment and the rebate which would be required for

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prepayment in full as of one month prior to said date.

The Department was asked the specific statutory authority for this rule involving deferment charges. The Department conceded that, unlike the Consumer Finance Act (Ill. Rev. Stat., ch. 17, par. 5601 et seq.), the Consumer Installment Loan Act makes no mention of deferment charges. It would, therefore, appear that attempt to authorize deferment charges and regulate the imposition of these charges exceeds the Department's statutory authority.

The failure to include a specific provision in the Consumer Installment Loan Act which would authorize regulation of deferment may have been an oversight, in view of the inclusion of specific regulatory authority in the companion law, the Consumer Finance Act. It does seem somewhat incongruous to allow regulatory jurisdiction in one case, and not the other.

The Joint Committee therefore recommends that the Department of Financial Institutions consider seeking legislation amending the Consumer Installment Loan Act to grant the Department specific authority to authorize deferment charges.

Seek Legislation Amending the Consumer Installment Loan Act

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

Section 110.230(q) (former Section 23(q)) of the Department of Financial Institutions' "Rules and Regulations Governing the Execution and Enforcement of the Illinois Consumer Installment Loan Act states:

All licenses not implemented by use within a period of 6 months after issue shall be forfeit unless failure is proven to be for reasonable cause. A new application and payment of all applicable fees is required after such forfeiture.

Section 4 of the Act states in relevant part that "the license shall remain in effect until it is surrendered by the licensee or revoked by the Department as hereinafter provided." Section 9 of the Act requires that for revocation of a license the Department must provide notice to the licensee and hold a hearing prior to revocation. In addition, the section details the causes for which a license may be revoked. Conspicuous

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in its absence from this provision is not using a license within 6 months of issuance.

As examination of the Consumer Installment Loan Act makes it evident that Section 110.230(q) (former Section 23(q)) of the rules is an impermissible attempt to circumvent the statutorily mandated bases for revocation of a license.

It may be, however, that based upon the Department's mandate to regulate the Consumer Installment Loan industry that it may be desirable to authorize the Department to cancel licenses for lack of use. If after study, it is felt that such authority is desirable, then the Department of Financial Institutions should seek legislation specifically authorizing this power. Therefore, the Joint Committee further recommends that the Department of Financial Institutions consider seeking legislation amending the Consumer Installment Loan Act to specifically grant the Department this authority.

Consolidate the Three Sets of Rules on Currency Exchanges

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

Presently, the Department of Financial Institutions has three sets of rules used in the administration and enforcement of the Community Currency Exchange Act, (Ill. Rev. Stat., 1981, ch. 17, par. 4802 et seq.). They are "Currency Exchange Act (38 Ill. Adm. Code T20)," "Rules of Practice and Procedure of the Department of Financial Institutions to be Followed in the Formulation and Issuance of Schedules of Maximum Rates for Check Cashing and Ambulatory Currency Exchanges," and "Schedules of Maximum Rates to be Charged for Check Cashing and Writing Money Orders by Community and Ambulatory Currency Exchanges (38 Ill. Adm. Code 130)."

The "Currency Exchange Act" contains provisions generally governing the issuance and sale of money orders and checks. However, the manner in which the allowable charges for check cashing and the money orders are determined is governed by a separate set of regulations and, the actual schedules of maximum rates are set forth in yet another set of regulations. As a result, members of the affected public are forced to refer to three separate sets of regulations in order to assimilate all necessary information about check cashing and money orders.

The problems involving the necessity of references to three separate sets of rules are typified by the last sentence of Section 130.50(e) (former Rule 5.05) of the rules on

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"Schedules of Maximum Rates to be Charged for Check Cashing and Writing Money Orders by Community and Ambulatory Currency Exchanges" which states that, "[n]othing in this Rule shall be construed to modify, amend, or abrogate any other rule or regulation of the Department of Financial Institutions relating to the issuance of money orders." The Department explained that this language was placed in Section 130.50(e) (former Rule 5.05) in order to state specifically that all references to money orders in the various sets of rules are to be interpreted consistently and not as conflicting.

It is evident that by consolidating these three sets of rules all information relating to issuance of checks and money orders and charges would then be found in one place, thus obviating the need for the type of explanatory language found in the above-quoted rule.

Therefore, the Joint Committee recommends that the Department of Financial Institutions consolidate its three sets of Rules on Currency Exchanges into one set of Rules on Currency Exchanges.

Examine its Fee Structure Relative to Currency Exchange Licensing

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

Under the "Community Currency Exchanges Act" (Ill. Rev. Stat. 1981, ch. 17, par. 4801 et seq.), the Illinois Department of Financial Institutions is charged with licensing and regulating currency exchanges. Section 4 provides in pertinent part that:

Such application shall be accompanied by a fee of \$100 which shall be the cost of investigating the applicant. When the application for a community currency exchange license has been approved by the Director and the applicant so advised, an additional sum of \$100 as an annual license fee for a period terminating on the last day of the current calendar year shall be paid to the Director by the applicant; provided, that the license fee for an applicant applying for such a license after July 1st of any year shall be \$50 for the balance at such year.

When the license for an ambulatory currency exchange license has been approved by the

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Director, and such applicant so advised, such applicant shall pay an annual license fee of \$25 for each and every location to be served by such applicant; provided that such license fee for an approved applicant applying for such a license after July 1st of any year shall be \$12 for the balance of such year for each and every location to be served by such applicant.

In response to Joint Committee questions, the Department stated that revenues generated through the administration of the Act were \$194,019 for fiscal year 1981. The costs of administering the Act for fiscal year 1981 were \$386,815.

During this fiscal year, revenues generated through fees amounted only to approximately 50% of the costs of administration. It may be fiscally more responsible for the licensees to bear a larger share of the administration costs for this program. The statute indicates that the original fee of \$100 is assessed for the cost of investigating the applicant. Section 4 of the Act has not been amended since 1969. Thus, it may be appropriate to adjust this amount to more accurately reflect the current cost of such an investigation. In addition, the other fees could be reviewed in terms of cost of regulation.

The Joint Committee recommends that the Department of Financial Institutions review this fee structure to determine whether rates should be raised and, if so, to develop and introduce legislation to implement such increases.

Seek Legislation Amending the Currency Exchange Act

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

Section 120.220 (former Regulation 22) states:

If any stockholder, director, officer, owner, or partner of a community or Ambulatory Currency Exchange is convicted of a crime under any law where the crime was punishable by imprisonment in excess of one year under which he was convicted, the Director may order that he divest himself of any interest that he may hold in any entity licensed by the Department. (emphasis added)

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Section 120.250 (former Regulation 25) states in relevant part:

No sale, transfer, or assignment of capital stock of a corporate licensee shall be made without first obtaining the consent and approval of the Director.

Section 120.220 (former Regulation 22) addresses the conduct of a stockholder while Section 120.250 (former Regulation 25) purports to grant to the Department the power to evaluate the qualifications of potential stockholders. Authority for this regulation of stockholders is not found in the Act. The Act consistently speaks in terms of officers and directors of corporations, not of stockholders.

Section 4 of the Act details the information to be provided by license applicants. Section 120.250 (former Regulation 25) parallels this provision of the Act. Subsection (d)(4) of Section 4 states in pertinent part: "If the applicant is a corporation the said information shall be required of each officer and director thereof." No mention of the stockholder is made in this section. (emphasis added)

Section 10 of the Act involves qualifications of applicants for licenses and speaks of "The Applicant, and its officers and directors, if a corporation...." Section 120.220 (former Regulation 22) which also involves qualifications of the licensees again is written in terms of stockholders of a corporation rather than officers and directors as found in the Act.

The Department cited Section 15(c) of the Act as the statutory authority for the divestiture which may be required under Section 120.220 (former Regulation 22). Section 15(c) authorizes the Director to revoke a license upon a finding that:

Any fact or condition exists which if it had existed at the time of the original application for such license, would have warranted the Director in refusing the issuance of the license.

This provision is inadequate statutory authority for Section 120.220 (former Regulation 22). As noted above, Section 4 of the Act addresses information to be provided by applicants and Section 10 addresses qualifications of applicants. Since neither section speaks of stockholders and Section 15(c) allows for revocation based upon conditions that would have resulted in an original denial of an application; it would appear to be an unwarranted expansion of the authority of the Department to provide by rule for an evaluation of the conduct of stockholders when the Act clearly does not purport to regulate that area.

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For the same reason Section 120.250 (former Regulation 25) appears to be an unwarranted expansion of the Department's powers. The Department relies on Section 10 of the Act as the statutory authority for this regulation.

However, as pointed out previously Section 10 of Act does not mention stockholders, rather it speaks in terms of the officers and directors of corporation.

The Department has, however, stated convincing policy reasons, in terms of its administration of the Act, why such information is necessary. Such policy reasons should be considered by the General Assembly.

The Joint Committee therefore recommends that the Department seek legislation to authorize it to regulate the subject of ownership of Currency Exchanges.

Examine its Fee Structure Relative to "The Illinois Credit Union Act"

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

Under "The Illinois Credit Union Act" (Ill. Rev. Stat., 1981, ch. 17, par. 4401 et seq.), the Office of the Department of Financial Institutions is charged with the licensing and regulation of State chartered credit unions. Section 12 of the Act sets examination fees based upon assets of credit unions that range from \$25 for those credit unions with assets of \$25,000 or less to \$2743.75 for credit union of assets of \$5,000,000.

The statute provides an alternative to this fee based upon per diem examination fees and states as follows:

In lieu of the above fee, the Department shall assess to the examined credit union a per diem examination fee including such part of the overhead cost as the Director determines is attributable to the examination, if the per diem examination fee is less than the fee would be based upon the above rates. In no event shall the fee be less than \$35. No examination fee shall be collected from a credit union until it has been in operation for one year.

In addition, each year credit unions are assessed a supervision fee based upon total assets which ranges from \$25 for credit

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unions with total assets of less than \$25,000 to \$1,500 plus \$150 for each additional \$10,000,000 in assets for those credit unions with assets greater than \$10,000,000.

In response to Joint Committee questions, the Department stated that revenues generated through the administration of the Act were \$704,422 in fiscal year 1981. The costs of administering the Act for fiscal year 1981 were \$807,063.

During the fiscal year, revenues generated through fees amounted to approximately 87.3% of the costs of administration. It may be fiscally more responsible for the licensees to bear a larger share of the administrative costs for this program. Thus, it may be appropriate to adjust this amount to more accurately reflect the current cost of the administration of the Act.

The Joint Committee recommends that the Department of Financial Institutions review this fee structure to determine whether rates should be raised and, if so, to develop and introduce legislation to implement such increases.

Seek Legislation to Authorize the Director to Appoint Hearing Officers Relative to the "Rules and Regulations Governing the Execution and Enforcement of the Illinois Uniform Disposition of Unclaimed Property Act"

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

Rule 4 of the Department of Financial Institutions' "Rules and Regulations Governing the Execution and Enforcement of the Illinois Uniform Disposition of Unclaimed Property Act and Related Statutes" states in relevant part: ". . . any qualified person designated in writing by the Director may hold a hearing concerning the claim of any person claiming an interest in any property delivered to the State under this Act."

Section 20 of the Act is entitled "Determination of Claims." The section states, "The Director shall consider any claim filed under this Act and may, in his discretion, hold a hearing and receive evidence concerning it." (emphasis added). Section 20(a) also states:

The Director shall prepare a finding and a decision in writing on each hearing, stating the substance of any evidence heard by him, his findings of fact in respect thereto, and the reasons for his decision. (emphasis added)

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Section 20 of the Act has no language authorizing the appointment of a hearing officer. One need only look to the emphasized portion of Section 20 noted above in order to see that the plain language of the provision makes it evident that it was contemplated that the Director would preside at hearings.

The Department was asked to cite the authority by which it allows the appointment of hearing officers. The Department cited Section 26 of the Act. Section 26 states: "The Director is hereby authorized to make necessary rules and regulations to carry out the provisions of this Act." This language, however, is not sufficient authority for the Director to appoint a hearing officer.

The Director's argument that he be allowed to appoint hearing officers in the interest of administrative efficiency has merit although at present it appears to be an expansion of the Director's statutory authority. The Joint Committee further recommends that the Department seek authorizing legislation.

DEPARTMENT OF INSURANCE

Cease the Practice of Issuing Interpretive Bulletins

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Department of Insurance

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

In September, 1969, the Department of Insurance instituted publication of "Illinois Insurance," a periodical designed to keep interested parties informed as to activities of the Department in particular and the national trends in insurance regulations in general. The Department has continued publication to the present on a bimonthly basis. While for the most part consisting of articles of interest to the insurance industry, schedules of hearings, and reports of Departmental action in hearings, the publication has occasionally been the medium for "unofficial" rulemaking. This rulemaking usually takes the form of Departmental positions on certain statutes or clarifications involving the formally promulgated rules of the Department.

Before the enactment of the Illinois Administrative Procedure Act, the Department engaged in the commendable practice of publishing proposed rules in "Illinois Insurance" and announcing the times and dates for public hearings on those rules. This practice also applied to amendments to rules. This policy was designed to give notice to the public and the industry of proposed changes in the regulations of insurance

in Illinois. With the enactment of the IAPA, the Department announced that all future rulemaking would be published in the "Illinois Register," as required by the IAPA. The Department has adhered to this required policy for the most part, but still uses "Illinois Insurance" to set what, from a reading of "Illinois Insurance," appears to be official Departmental policy. The review of all issues of "Illinois Insurance" indicated 38 examples in which the Department announced a policy which appeared to be generally applicable to all insurance companies or to all companies writing a particular line of insurance.

The Department of Insurance has also adopted for the use of its financial examiners a publication of the National Association of Insurance Commissioners (NAIC) entitled Examiners Handbook. The Examiners Handbook is composed of the Financial Condition Examiners Handbook and the NAIC Model Market Conduct Examination Handbook.

The Financial Condition Examiners Handbook (Financial) has as its stated purpose to assist state insurance departments in establishing and operating an effective examination system. Financial provides a reference for commissioners and examiners and is intended to convey an overview of the entire examination process.

While the purpose of the handbook is to provide guidance to the authorities responsible for the examination of insurance companies, it contains apparent implicit rulemaking in certain sections. A number of its parts give the examiner specific items on which to focus attention. The effect of an examination can be action against the insurance company. Any agency statement of general applicability implementing a policy is a rule within the definition in Section 3.09 of the Illinois Administrative Procedure Act.

During the course of the Joint Committee's review, the handbook has been examined. In addition, during the course of this review, two incidents of the Department's apparent use of interpretive bulletins to set policy were discovered. The first instance was that concerning the enforcement of Part 952. The Department has also issued two interpretive bulletins to elaborate on the standards postulated by Part 6101 (former Rule 55.01). This rule was promulgated pursuant to the "Health Maintenance Organization Act," Ill. Rev. Stat. 1981, ch. 111½, par. 1401 et seq., and it sets forth procedures to be followed by health maintenance organizations. The two bulletins list additional requirements which health maintenance organizations must meet in their relations with their insureds.

The above examples were the only ones to which the Committee's attention was directed by the Department's answers to specific questions on enforcement, and Department representatives were not aware of any additional bulletins, although they could not be certain that other bulletins had not

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been issued. These bulletins appear to set requirements with which companies and agents must comply; by doing so, they become rules. Section 3.09 of the Illinois Administrative Procedure Act defines "rule" as "each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy. . . ." (Emphasis added.)

While the Department has agreed to file the bulletins relating to Parts 952 and 6101 (former Rules 9½.02 and 55.01) as rules in compliance with Section 5.01 of the Illinois Administrative Procedure Act, the Department should refrain from future use of such short-cut rulemaking.

Therefore, the Joint Committee recommends that the Department of Insurance cease the practice of issuing interpretive bulletins to set policy and utilize the procedures of the Illinois Administrative Procedure Act in all future statements of policy.

Seek Legislation to Eliminate Apparent Conflict Between Sections 43 and 56 of the Illinois Insurance Code

Basis of Review: Five Year/Industry and Labor/Business Regulation: Department of Insurance

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

Section 43 of the Illinois Insurance Code deals with the minimum surplus required to be maintained by the various types of domestic mutual insurance companies. Dollar amounts are listed in the section representing the surplus required to be held before a company can transact business in the State of Illinois. Failure to maintain the minimum surplus at the level mandated by Section 43 of the Code may result in proceedings against the company.

Section 56 of the Insurance Code provides that the guaranty fund of a domestic mutual company may be repaid "out of the surplus of such company in excess of the original surplus required of such company by section 43." (emphasis added)

Section 43 of the Code has been amended a number of times since its original adoption in 1937, with the most recent amendment occurring in 1977. The minimum surplus required to be maintained has been increased by the amendments. Section 56 of the Code has not been amended since its adoption in 1937. The original surplus to which Section 56 refers may well have been rendered obsolete by subsequent amendments to Section 43.

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The Department of Insurance has promulgated Rule 3.01 on guaranty fund accumulation. Section 7 of the rule deals with the retirement of the guaranty fund and reads in part:

No payment may be made by a company unless the company's surplus as regards policyholders is reasonable in relation to the company's outstanding liabilities and adequate to its financial needs or when such payment reduces the company's surplus to less than that currently required under Section 43 of the Illinois Insurance Code.

The rule complies with Section 43 of the Insurance Code. Compliance with Section 56 of the Code, however, could put a company into conflict with the rule and Section 43, should the original surplus under Section 43 be less than the current minimum required surplus. The rule, although implementing Section 56, has been drafted in light of the amendments to Section 43.

Due to the potential conflict between statutory requirements, the Joint Committee recommends that the Department of Insurance seek legislation to eliminate the apparent conflict between Sections 43 and 56 of the Illinois Insurance Code concerning surplus requirements for domestic mutual companies.

Seek Legislation Amending "An Act relating to local mutual district, county and township insurance companies"

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Department of Insurance

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

Section 5301.50 of the Rules of the Department of Insurance requires that surety bonds be maintained for all employees and officers in an amount based upon the admitted assets of the company. The rule sets out a schedule for the required amounts of the bonds, which range up to \$5,000,000.

Section 6 of "An Act relating to local mutual district, county and township insurance companies," Ill. Rev. Stat. 1981, ch. 73, par. 204.1 et seq. states in full:

The treasurer and secretary shall give bond to the company for the faithful performance of their duties, in such amounts as shall be prescribed by the Board of Directors, but in

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no case less than one thousand dollars (\$1,000).

The statute requires the Board of Directors to set the amount of the bond. Part 5301 is in direct contradiction with the statute, since the rule purports to govern that which is within the authority of the Board of Directors.

The rule also requires all employees and officers of the company to be bonded. This, too, is in direct contradiction of the statute. Under the rules of statutory construction, the inclusion of one term works to the exclusion of terms not listed. The specific listing of two officers from whom bonds are required (the Treasurer and Secretary) would prevent the requirement of bonds from any other officers or employees.

It is the position of the Department that because the statute has not been amended since 1936, the action is necessary because the companies regulated did not have the assets then that they now have. Property values were not as high as they are today, and crime, such as embezzlement, was not as common then. The Department has scheduled bond requirements based on assets to insure that the company will have a bond to recoup assets and pay claimants.

The Department's position appears to be well-taken, even though it is obviously in contradiction of the statutory provision. In such an instance, the Department must realize that it cannot choose to ignore the statutory provision simply because it has determined that its policy is preferable to that embodied in the law. In such a case, it is incumbent on the Department to seek legislation, so that a final policy determination can be made through the constitutional processes. Accordingly, the Joint Committee recommends that the Department introduce such legislation.

Guideline for Determining "Usual," "Customary," or "Reasonable" Charges

Basis of Review: Five Year/Industry and Labor/Business Regulation: Department of Insurance

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

In the May-June, 1974, issue of "Illinois Insurance," the Department noted that there were wide deviations in the method of determining what is a "usual," "customary," or "reasonable" charge, as used in accident and health insurance plans. The Department discovered that some insurers had determined standards for the administration of accident and health claims based on information far outdated or inaccurate

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for the locality of the provider or had used arbitrary judgments. The Department published the following guideline, effective August 1, 1974, which was to be followed by accident and health carriers:

When, in the administration of claims under any accident and health policy as to which benefits in the area or locality of the provider for his services are based on "usual," "customary," or "reasonable" charge, the insurer shall maintain such records or follow procedures as are reasonably necessary to determine what, in fact, are the "usual," "customary," or "reasonable" charges made for comparable services in such area or locality.

When a claim for benefits under any accident and health insurance policy appears to exceed "usual," "customary" or "reasonable" charges as determined by the company's records or procedures and if the insurer (a) would pay a lesser amount because the charges were excessive and (b) does not have information clearly indicating why the charge is in excess, then documentation of the reason for denial should be contained in the claim records. Such documentation shall contain proof that the insurer questioned the provider as to whether the charge may be due to circumstances not revealed in the proofs of loss. The results of the inquiry made of the provider will be contained in the claim records.

The Department's position was that it was a violation of Section 154.3 of the Illinois Insurance Code to administer the terms in a manner not based on the guideline. Section 154.3, repealed in 1977, listed acts constituting improper claims practice. The substance of Section 154.3 is now contained in Section 154.6 with only technical changes. No further actions or announcements were found which abrogated or repealed this policy.

This policy appears to be a rule within the scope of Section 3.09 of the Illinois Administrative Procedure Act (IAPA). The guideline is clearly a Departmental statement of general application that prescribes law or policy. Therefore, if the policy is still effective, it would be appropriate to promulgate it as a rule pursuant to Section 5.01 of the IAPA. The Joint Committee so recommends.

Definition of "Documentation"

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Basis of Review: Five Year/Industry and Labor/Business
Regulation: Department of Insurance

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

The Department of Insurance requires documentation of a number of decisions by insurance companies. In the March-April, 1976, issue of "Illinois Insurance," the Department noted that lack of documentation was a recurring criticism resulting from performance examinations of property and casualty companies and life, accident and health companies. In an attempt to address this problem, the Department developed the following definition:

The file is considered documented when the Company maintains written and detailed instruments, including notes on oral communications, sufficient to allow reconstruction of the Company's activities and the basis for the decisions leading to the same.

The Department indicated at the time of publication that it was considering incorporating this definition in the official Departmental Rules and Regulations to provide all companies a guide to the Department's requirements regarding company records. No further action was discovered which repealed or modified this definition. The definition is clearly a rule within the scope of Section 3.09 of the Illinois Administrative Procedure Act (IAPA). The definition is a statement of general applicability that interprets policy. If this definition of "documentation" is still effective, it should be promulgated as a rule pursuant to Section 5.01 of the IAPA. The Joint Committee so recommends.

Policy Concerning Improper Exclusions and Limitations of Accident Coverages

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Department of Insurance

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

In the September-October, 1973, and September-October, 1976, issues of "Illinois Insurance," the Department published an article entitled "Improper Exclusions and Limitations of Accident Coverages." The article first ran in 1973 and was republished in 1976 with additional material. The Department adopted the following position regarding exclusions, limitations,

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and reductions in accidental death or bodily injury coverage, whether in a policy or in a rider such as the standard double indemnity rider in a life policy, or an accidental death and dismemberment rider:

All forms of accidental coverage should provide a stipulated benefit, without any reduction, due to purely accidental circumstances and this benefit should not be restricted by unreasonable terminology or exceptions or limitations on the basic definition of loss due to an accident.

The 1973 article considered some examples of accidental death which could not be excluded by a literal interpretation of policy clauses designed to avoid liability for suicidal deaths.

The 1976 reprint considered other exclusionary language, and the Department advised that such language should not be more restrictive than the following:

Commission of a felony
Voluntary participation in a riot or civil
disturbance
External bacterial infection

The article concluded with a caveat that existing language which does not conform, or is contrary to, the policy in the article must be modified in an acceptable manner.

Interpretation and Implementation of Section 143c of the Illinois Insurance Code

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Department of Insurance

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

P.A. 80-823 added Section 143c to the Code, effective October 1, 1977. The section requires that any insurance policy authorized under Class 1, 2, or 3 of Section 4 of the Code cannot be delivered unless accompanied by a notice advising the insured of the address of the Illinois Department of Insurance, Consumer Services Section (formerly Public Services Division), and the address of the insurance company's complaint department.

In the January-February, 1978, issue of "Illinois Insurance," the Department published an article entitled "Legislation-Required Consumer Notices," in which the Department established the basic requirements and

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interpretations of the intent within Section 143c of the Code. The article listed suggested wording and minimum information requirements on the notice, and the Department's address. The Department also required that the company's address should be that of the office issuing the policy and not the address of the company's corporate headquarters. The Department also noted that although the law requires "written notice," the Department would permit some flexibility in the manner such notice is given provided that insurers comply fully with the intent of the legislation. Insurers may, for example, use a mailer accompanying the policy; attach the notice as a sticker on the policy itself; or for computer issued policies, incorporate the notice in their computer program.

The Department defined "insurance policy delivered" as new and renewal policies for purposes of Section 143c. The Department recommended that this notice not be attached to the policy as an endorsement as this would require the filing of the endorsement, and this is not the intent of the law.

Prohibition of Insurers Requiring Polygraph Examinations Before Paying a Claim

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Department of Insurance

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

In the September-October, 1978, issue of "Illinois Insurance," the Department set out its policy on the use of polygraph tests by insurance companies. The article noted that most policy contracts contain a condition requiring the assistance and cooperation of the insured in the event of a loss and settlement of the claim. No policy contract, however, may require that the insured submit to a lie detector test before payment of a claim can be made by the company.

The Department stated that its position was that while a company may request it, no company shall require an insured to submit to a lie detector test as a basis for payment of a claim. Any deviation from this position would be considered an improper claims practice.

This policy pronouncement appears to be a rule within the purview of Section 3.09 of the Illinois Administrative Procedure Act (IAPA). If the Department still considers this to be effective policy, it should promulgate it as a rule pursuant to Section 5.01 of the IAPA. The Joint Committee so recommends.

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Requirements Regarding the Filing by Companies of Certain Property and Casualty Rates

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Department of Insurance

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

An article appeared in the September-October, 1981, issue of "Illinois Insurance" which established Departmental policy regarding the appropriate filing dates for rates. In the article, the Department stated that the Insurance Code and related Department Rules and Regulations, which it did not designate, require that certain rates for property and casualty insurance be filed with the Department. According to the Department, a typical filing designates one effective date for new business and another for renewal business. Market conduct examinations done by the Department revealed a discrepancy between the Department's and industry's interpretation of the effective date of such rate changes. Some companies defined the effective date of a rate change as the date the policy is processed without regard to the date the coverage actually becomes effective. The Department maintained the opposite view.

The Department, in the article, explained that the use of process date rather than coverage date resulted in rates being applied inconsistently to individuals or risks of the same class or of essentially the same hazard. The Department further stated that it would not accept for filing or use in the State of Illinois any rate filing which proposes to use an effective date other than the actual effective date of coverage. The Department also stated that violations of this procedure would be cited in a company's examination report as violations of Section 429 of the Insurance Code and subject the insurer to the appropriate administrative action.

This statement of generally applicable policy is a rule within the scope of Section 3.09 of the Illinois Administrative Procedure Act (IAPA). The Department has announced a policy with which all companies must apparently comply under penalty of legal action. The Department did not designate the rules which require the filings, nor did it list the statutes

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requiring the filings. These are all appropriate matters for rulemaking pursuant to Section 5.01 of the Illinois Administrative Procedure Act. The Joint Committee so recommends.

Implementation of Section 408.2 of the Illinois Insurance Code

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Department of Insurance

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

Section 408.2 of the Illinois Insurance Code was added by P.A. 82-498 and became effective September 16, 1981. This section provides in part:

Any public record, or any data obtained by the Department of Insurance, which is subject to public inspection or copying and which is maintained on a computer processible medium, may be furnished in a computer processed or computer processible medium upon the written request of any applicant and the payment of a reasonable fee established by the Director sufficient to cover the total cost of the Department for processing, maintaining and generating such computer processible records or data, except to the extent of any salaries or compensation of Department officers or employees.

In the November-December, 1981, issue of "Illinois Insurance," the Department published a price schedule detailing the types of data available and the cost. The Department stated that the listing would be periodically updated and that prices would be subject to change without notice. In the March-April, 1982, issue of "Illinois Insurance," the Department published a new list with increased prices. The setting of fees in a situation where the Director is given authority to set reasonable fees is properly a subject of rulemaking by the Department. In the same November-December issue in which fees were first set, the Department noted the adoption of an emergency rule to set an increased fee for recovering reasonable costs of examination. This was authorized by P.A. 82-108, amending Section 408 of the Code. The emergency rule, 25.01, raised the fee from \$125 to \$175.

Section 4(c) of the Illinois Administrative Procedure Act (IAPA) states that no agency rule may be invoked for any purpose until it has been made available for public inspection and filed with the Secretary of State as required by the IAPA.

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As a result, the fee charged by the Department is probably unenforceable.

The similarity between the two fee setting structures is evident. The statute authorizes the Director to use discretion, within limits, to set fees for services performed by the Department. These fees are prescriptions of policy which are appropriate subjects for general rulemaking pursuant to Section 5.01 of the Illinois Administrative Procedure Act. The Joint Committee recommends that the Department undertake appropriate rulemaking.

Constitutional Officers

OFFICE OF THE ATTORNEY GENERAL

Modify the Illinois Solicitation Act

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

The Illinois Solicitation Act (Ill. Rev. Stat., ch.23, Section 4(d)) states:

The Attorney General shall cancel the registration of any organization which fails to comply with subdivisions (a), (b) or (c) of this section within the time therein, prescribed, or fails to furnish such additional information as is requested by the Attorney General within the required time, except that the time period may be extended by the Attorney General for a period not to exceed 3 months. Notice of such cancellation shall be mailed to the registrant at least 15 days before the effective date thereof. (emphasis added)

Section 400.60(j) (former Rule 83) of the Attorney General's Rules on the Illinois Solicitation Act provides:

The registration of an organization is subject to cancellation for failure to file a timely and complete financial report. (emphasis added)

There is apparent conflict between the Act and the Attorney General's Section 400.60(j) (former Rule 83). The statute, by virtue of the phrase "shall cancel" appears to make its violators subject to mandatory cancellation of registration, while Section 400.60(j) (former Rule 83) by virtue of the

phrase "is subject to cancellation" would make this cancellation discretionary.

The Attorney General explained that it is felt that each case of delinquent reports must be reviewed to determine whether it is in the best interest of the public to cancel the charitable organization's registration. The Attorney General pointed out that unforeseen circumstances may make it impossible for a charity to file its report on time. It was asserted that it would be manifestly unfair to cancel the registration of a legitimate, well managed charity merely because an arbitrary time period had elapsed. It was also explained that cancellation could turn a cooperative organization into a recalcitrant one causing an enormous expenditure of time, energy and resources where a more flexible approach would obtain missing financial information.

While there has been no judicial interpretation of the meaning of the word "shall" in connection with Section 4 of the Act, the Attorney General has consistently interpreted the timing of both the cancellation of registration and any subsequent litigation as matters within the discretionary powers of his office. The Attorney General has, however, made no showing that it was the intent of the drafters to make this word permissive and not mandatory.

The word in its context is unambiguously mandatory. The section states that the Attorney General shall cancel the registration, if the organization doesn't comply with certain prescribed information requirements or do certain prescribed acts. The section even states explicitly that should more time be needed to obtain this information or do these acts, then the Attorney General may extend the time period for up to three months. It is only if the organization (1) does not request an extension of time or (2) has received an extension of time and still has not complied, that the registration shall be revoked.

In a similar vein Section 12 of the Illinois Solicitation Act states as follows:

Registration under this Act shall not be deemed to constitute an endorsement by the State of Illinois of the charitable organization, professional fund raiser, or professional solicitor so registered. It shall be unlawful for any charitable organization, professional fund raiser, or professional solicitor to represent, directly or indirectly, for the purpose of solicitation and collection of funds for charitable purposes, in any form or manner whatsoever by advertising or otherwise, that it has registered or otherwise complied with the provisions of this Act. The Attorney General shall cancel the

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registration of any organization, professional fund raiser, or professional solicitor which or who violates the provisions of this section. (emphasis added)

Section 400.100 (former Rules 94 and 95) of the Attorney General's rules on the Illinois Solicitation Act state as follows:

- a) Any representation by a charitable organization, professional fund raiser, or professional solicitor in connection with its solicitation that it is registered or has otherwise complied with the Illinois Solicitation Act is unlawful.
- b) The Attorney General may immediately cancel the registration of any person or organization violating Rule 94. (emphasis added)

Both the statute and the rules prohibit anyone using the fact of registration with the State of Illinois to connote approval by the State of that person's or entity's methods and operations. However, there is one major difference between the statute and the rules. While the statute states that the Attorney General shall cancel the registration of anyone violating the statutory provision, the rule indicates that the Attorney General may cancel the registration of anyone violating the rule, thus implying discretion on the part of the Attorney General that is not warranted by the statutory language.

Nonetheless, the Attorney General's position regarding the need for discretion appears sound. Accordingly, the Joint Committee recommends that the Attorney General seek legislation modifying the Illinois Solicitation Act to authorize this discretionary power.

OFFICE OF THE SECRETARY OF STATE

Rules Governing Suspension of Bidders and Disclosure by Bidders

Basis of Review: Five Year/Government Management: State Buildings Construction and Maintenance

Joint Committee Recommendation: April 19, 1983

Specific Recommendation:

Section 6(d) of the Illinois Purchasing Act (Ill. Rev. Stat. 1981, ch. 127, par. 132.6(d)) provides as follows:

The rules and regulations required by Section 5 of this Act ... shall provide ...

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(t)hat any bidder may be suspended for not more than one year for violation of the rules and regulations of any State agency adopted in pursuance of Section 5 of this Act or for failure to conform to specifications or terms of delivery.

Section1 of the Illinois Purchasing Act (Ill. Rev. Stat. 1981, ch. 127, par. 132.6-1) provides:

The rules and regulations promulgated under Section 5 of this Act shall require each person who submits a bid in relation to any purchase in excess of \$1,500 under this Act to disclose in his application to be placed on a bidder list the name of each individual having a beneficial interest of more than 7½% in the bidding enterprise and, if a corporation, the names of all its officers and directors.

The "Procedures for Construction Contracts for the Office of the Secretary of State" do not contain rules dealing with suspension of bidders and disclosure by bidders, as required by Section 6(d) and 6-1. The Joint Committee accordingly recommends to the Secretary the adoption of such rules.

Date Agency Response Received: August 22, 1983

Nature of Agency Response: Agreed to Initiate Rulemaking

Repeal Rules 2 through 6 of the "Procedures for Construction Projects"

Basis of Review: Five Year/Government Management: State Buildings Construction and Maintenance

Joint Committee Recommendation: April 19, 1983

Specific Recommendation:

Section 3.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1003.09) defines "rule" as "each agency statement of general applicability that implements, applies, interprets, or prescribes law of policy, but does not include . . . statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency." Of course, if an agency policy is not a rule, the rulemaking procedures of the IAPA do not apply, and the "rule" does not have to be filed with the Secretary of State.

Rules 2 through 6 state policies of the Secretary of State which do not effect private rights or establish general

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procedures applicable to persons outside the Secretary's office. For example, Rule 2 governs the adoption by the Secretary of "a general statement outlining the scope of the work"; Rule 3 requires the Secretary's approval on all building proposals; Rule 4 makes the Secretary's Department of Physical Services responsible for project coordination; Rule 5 requires the Department of Physical Services to provide the project architect with the data for development of the project design; Rule 6 requires the Department of Physical Services to prepare the project budget. None of these provisions appear to be properly classified as a rule, as that term is defined in the IAPA; therefore, the Joint Committee recommends to the Secretary of State that he repeal Rules 2 through 6.

Date Agency Response Received: August 22, 1983

Nature of Agency Response: Agreed to Initiate Rulemaking

Miscellaneous Agencies

COMMISSIONER OF BANKS AND TRUSTS COMPANIES

Hearing Procedures Under the Rules on Electronic Fund Transfers

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

Section 6.04(c) of the Commissioner of Banks and Trust Companies rules on Electronic Fund Transfers states that hearings "and matters related thereto shall comply with Sections 10 through 15 of the Illinois Administrative Procedure Act." The Commissioner was asked if there are any specific hearing procedures to supplement the general requirements of Sections 10 through 15 of the Illinois Administrative Procedure Act. The Commissioner responded that there are no specific hearing procedures.

Section 4(a) of the Illinois Administrative Procedure Act (see Appendix A pp. 458-482) states that, "In addition to other rule-making requirements imposed by law, each agency shall: 1. Adopt rules of practice setting forth the nature and requirements of all formal hearings." By attempting to rely upon Sections 10 through 15 of the Illinois Administrative Procedure Act, it appears that the Commissioner is attempting to circumvent the clear mandate of Section 4(a) of the Illinois Administrative Procedure Act.

The general hearing procedures detailed in the Administrative Procedure Act are certain minimal standards which must be used by administrative agencies. Since they apply to a broad

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group of agencies with diverse functions and subject matter regulated, they are of necessity not specific. Each agency will have particular areas of concern and problems, in the context of hearings, that are unique to that particular agency. Because of this, it was envisioned that agencies would promulgate specific hearing procedures tailored to the unique needs of the people or entities regulated.

It is only necessary to look at the provisions of the Illinois Administrative Procedure Act to see clearly that the statutory provisions are envisioned as general guidelines and not specific hearing rules. For example, Section 10(a) states that "...all parties shall be afforded an opportunity for hearing after reasonable notice." The concept of what constitute "reasonable notice" is not specified. Of course, depending upon the agency involved and the subject matter of the hearing the specific time period would vary. This would be an appropriate subject for rulemaking.

An additional example from Section 12(c) of the Illinois Administrative Procedure Act is the statement "The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence." The evaluation of evidence adduced in the context of a contested hearing is an exercise of agency discretion under the Illinois Administrative Procedure Act. Section 4.02 of the Illinois Administrative Procedure Act requires that "Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power." Therefore, it would appear appropriate for the Commissioner to promulgate rules defining the standards and criteria to be used by the trier of fact in the context of a contested hearing.

Therefore, the Joint Committee recommends that the Commissioner of Banks and Trust Companies promulgate specific hearing procedures to supplement the general requirements of Sections 10 through 15 of the Illinois Administrative Procedure Act.

Fee Structure Relative to Electronic Fund Transfers

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

As noted in the foregoing objections, there are problems relative to lack of statutory authority associated with some of the fees imposed pursuant to the Electronic Fund Transfers Act and rules.

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In response to Joint Committee inquiries, the Commissioner of Banks and Trust Companies advised that revenues generated from fees charged pursuant to the Electronic Fund Transmission Facility Act and associated rules and regulations amounted to approximately \$5,000 for fiscal year 1981, and it was estimated that roughly \$5,000 will also be generated during fiscal year 1982. The Commissioner's office also advised that the cost of administering the Act and rules was approximately \$40,000 for fiscal year 1981, with a similar cost anticipated for fiscal year 1982.

During these two fiscal years, revenues generated through fees amounted only to approximately 12½% of the costs of administration. It may be fiscally more responsible for those regulated by the Act and rules to bear a larger share of the administrative costs of the program. However, as noted, it is first necessary to resolve the problems of lack of statutory authority and vagueness associated with some of the fees imposed pursuant to the Act and rules.

Therefore, the Joint Committee recommends that the Commissioner examine the entire fee structure for the Act and rules to determine whether the allowable fees should be raised to offset the cost of operating this program.

Collective Study of the Programs and Functions Relative to Depository Institutions

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

During the course of the review of the various rules classified under the subarea of "Financial Institutions," it became evident that many of the historic differences between the three major types of financial institutions--banks, savings and loans, and credit unions--have been eroded to the degree that major differences in the services provided by each type of institution are no longer quite so distinct as in the past.

Much of the impetus for modification of the powers of these institutions has come from the federal level. In the past two years there have been two congressional enactments that have significantly contributed to this blurring of the distinctions between banks, savings and loan associations, and credit unions. The first of these was the "Depository Institutions Deregulation Act of 1980," Public Law 96-221. The stated purpose of this Act was to

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facilitate the implementation of monetary policy, to provide for the gradual elimination of all limitations on the rates of interest which are payable on deposits and accounts, and to authorize interest-bearing transaction accounts,

In order to implement these purposes, the Act made a number of changes in the traditional differences between the 3 types of financial institutions. One of these changes provides for the phasing out, over a period of time, of what is known as "Regulation Q." Regulation Q was enacted to fix the maximum amounts of interest that could be paid on deposits by financial institutions. The original rationale of the regulation, which allowed savings and loan associations to pay higher interest rates than commercial banks, was to prevent disintermediation from savings and loan associations to commercial banks to protect the financial health of savings and loan organizations and the amount of money available for the home mortgage market. However, Regulation Q has been proven ineffective, in that when interest rates rose above the ceiling imposed by this regulation depositors took their money out of the savings and loans and invested it in money market funds. Hence, the disintermediation occurred despite, or maybe because of, Regulation Q. For these reasons, Congress mandated a phase out of this interest differential between savings and loan associations and commercial banks.

The second major provision of the Act permits insured depository institutions--commercial banks, savings and loan associations, and credit unions--to offer interest bearing transaction (or checking) accounts to individuals. Prior to this change, commercial banks were forbidden to pay interest on demand deposits.

The third major change found in this Act expands the asset powers of federal savings and loan associations. Traditionally, savings and loan associations were depositories and home mortgage lenders. This legislation gave federal savings and loan associations authorization to hold 10% of their assets in consumer loans, commercial paper, corporate debt securities and banker acceptances. They were also granted the power to offer trust services on the same basis as national banks.

The second federal enactment that impacts upon the distinction between the various types of financial institutions is the "Garn-St. Germain Depository Institutions Act of 1982," Public Law 99-320. The Act again addresses the elimination of interest rate differentials first addressed in the "Depository Institutions Deregulation Act of 1980." Section 326.327 of Title III of the Act eliminates the interest rate differential by January 1, 1984.

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The Act continues to expand the powers of federal savings and loan associations to make them more similar to the powers possessed by commercial banks. Section 312 of Title III authorizes all federal associations to accept individual or corporate demand deposit accounts in connection with a corporate, commercial, agricultural or business loan relationship. Section 325 for the first time allows federal savings and loan associations to make commercial loans.

Finally, the Act allows depository institutions to offer a new account equivalent to, and competitive with, money market mutual funds.

Additional changes at the Federal level are continuing and blur the traditional distinctions between the types of institutions even further.

All of the changes in the distinctions between the various types of federal financial institutions have a direct bearing on the relationships between financial institutions on the state level. State regulations generally mirror those federal changes not actually mandated to state institutions. This is necessary in order to keep state financial institutions competitive with their federal counterparts.

State chartered banks are regulated by the commissioner of Banks and Trusts. State chartered savings and loan associations are regulated by the savings and loan commissioner, and state chartered credit unions are regulated by the Department of Financial Institutions. The functions of these financial institutions have become more and more similar, and as noted previously, in many cases, the services provided by each type of institutions are the same.

One of the principal responsibilities of the Five-Year Review program of the Joint Committee is the elimination or phasing out of outdated, overlapping or conflicting regulatory jurisdictions. (III. Rev. Stat., 1981, ch. 127, par. 1007.08(b)(3)) Pursuant to this statutory direction, it would appear appropriate that the regulatory programs and procedures of the Commissioner of Banks and Trusts, the Commissioner of Savings and Loans, and the Department of Financial Institutions be studied in an effort to determine whether or not there are any programs or functions of the agencies that may be administered more effectively if consolidated. The expertise for such a study would seem to be particularly that of the three agencies now responsible for this regulation. The Joint Committee, therefore, recommends that the Commissioner of Banks and Trust Companies, the Office of the Savings and Loan Commissioner, and the Department of Financial Institutions undertake a collective study of the programs and functions relative to the depository institutions under their control, and make appropriate recommendations to the General Assembly and the Governor

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relative to consolidation of the functions to avoid overlapping regulatory jurisdictions and duplication of administrative efforts.

ILLINOIS TOLL HIGHWAY AUTHORITY

Promulgate Rules Prescribing the Authority's Toll Rates

Basis of Review: Complaint Review

Joint Committee Recommendation: June 7, 1983

Specific Recommendation:

The Illinois Toll Highway Authority is required to set its toll rates by rule under Ill. Rev. Stat. 1981, ch. 121, par. 100-10. Section 4(c) of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004(c)) provides, "No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act."

Date Agency Response Received: None

Nature of Agency Response: Refusal to Promulgate Rules

Delay the Authority's Pending Rate Increase Until the Toll Rates are Set by Rules

Basis of Review: Complaint Review

Joint Committee Recommendation: June 7, 1983

Specific Recommendation:

The Illinois Toll Highway Authority is required to set its toll rates by rule under Ill. Rev. Stat. 1981, ch. 121, par. 100-10. Section 4(c) of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1004(c)) provides, "No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act."

Date Agency Response Received: None

Nature of Agency Response: Refusal to Delay Increase

OFFICE OF THE SAVINGS AND LOAN COMMISSIONER

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Bonus Plans

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

Illinois Revised Statutes, Chapter 17, Section 4-21 is the statutory provision authorizing Bonus Plan Accounts. Pursuant to this statutory authority, the Office of the Savings and Loan Commissioner promulgated Article VII of the rules and regulations.

In its answer to the Joint Committee's initial questions about this Article, the Commissioner stated that Article VII is obsolete because few, if any, bonus plans exist.

Section 4-21(b) of the Act specifically provides for the establishment of several bonus plans. Section 4-21(d) of the Act states that "(a)ny bonus plan other than those provided by paragraph (b) of this section may be established for the purpose of encouraging thrift, systematic savings or long term investment upon approval by the Commissioner by general regulation..."

The Commissioner explained that regulations under which federally-chartered associations may issue bonus plan accounts are appreciably less restrictive than the provisions of Section 4-21. (These federal regulations may be found at 12 CFR, 545.1-1 et seq.) Section 1-6(c) of the Act confers upon Illinois state-chartered associations..." all of the powers granted to a savings or thrift institution organized under the laws of the United States and which is located and doing business in Illinois, subject to regulations of the Commissioner." Section 7.05 of the Illinois Administrative Procedure Act charges the Joint Committee as one of its duties, with "...reducing the number and bulk of rules..." Section 250.1400(d)(3), as one of the criteria for Joint Committee review, directs an inquiry into "Are the rules free of overlaps and conflicts between requirements and between regulatory jurisdictions." As noted by the foregoing discussion, the Office of the Savings and Loan Commissioner has stated that there is no need for Article VII of the Commissioner's rules, nor is there a need for that provision of the statute dictating these regulations. Therefore, the Joint Committee recommends that the Office of the Savings and Loan Commissioner seek legislation repealing Illinois Revised Statutes, Chapter 17, Section 4-21.

Formula for Determining the Illinois Residential Foreclosure Rate

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Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

Section 5 of Article XV of the Office of the Savings and Loan Commissioner's Rules on Mortgage Bankers requires each applicant for renewal of licensure to include in the application a computation of its Illinois residential foreclosure rate, based on the following formula:

- (A) Add the number of foreclosure proceedings instituted during the five full calendar years immediately preceding the filing of the application for a license to operate as a mortgage banker on Government-insured mortgage loans originated by the licensee during the five full calendar years immediately preceding the filing of the application for a license to operate as a mortgage banker;
- (B) Take the total determined by the computation defined in (A) hereinabove and divide the sum by the number of Government-insured mortgage loans originated by the licensee during the five full calendar years immediately preceding the filing of the application for a license to operate as a mortgage banker. (emphasis added)

Section 6 of the Mortgage Bankers Act contains the following formula for the determination of the same rate:

The Illinois residential foreclosure rate on Government-insured mortgages for a particular mortgage banker shall be the quotient determined by dividing (a) the number of foreclosure proceedings instituted in Illinois during the 5 immediately preceding calendar years on Government-insured residential mortgage loans with the number of Government-insured residential mortgage loans originated in Illinois during the 5 immediately preceding calendar years with which such licensee has any connection. (emphasis added)

This formula is used by the Commissioner to determine whether or not a savings and loan is using sound underwriting

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TO EXISTING RULES

practices in granting mortgage loans. It is evident that the statute and the rule conflict.

Part A of Section 5 of the rules takes into account foreclosure proceedings instituted on loans "originated by the licensee during the five full calendar years immediately preceding the filing of the application." Section 6 of the Act, however, requires that foreclosures on all loans "with which (the) licensee has had any connection" be taken into account.

Part B of the rules refers to loans "originated by the licensee," while Section 6 of the Act refers to loans "with which the licensee has had any connection."

The Commissioner conceded that Section 5 of the rules formulates the Illinois residential foreclosure rate differently than would strict adherence to Section 6 of the Act. The Commissioner explained that it is felt that the major intent of the statutory provision is to eliminate poor underwriting and the definition of "origination," therefore, excludes the servicing of loans. Part B of Section 5 of the rules then relies upon this definition. The Commissioner contended that to require the same disclosure of foreclosures on loans serviced would result in many loans being counted twice, because it is common for a company granting a loan to contract with another company to handle the servicing. The Agency stated that the net result, in addition to the distortion of figures, could be to penalize a servicer for the poor underwriting of another company.

It is evident the rule conflicts with the statute. The statute mandates a manner in which this foreclosure rate is to be computed and despite that clear direction, the Commissioner, by rule, has developed a different formula for computing this foreclosure rate.

The Commissioner, however, may be able to establish that the foreclosure rate contained in the rules is more statistically valid than the formula contained in the Act. The Joint Committee, therefore, recommends that the Office of the Savings and Loan Commissioner seek legislation modifying the formula for determining the Illinois residential foreclosure rate found in Section 6 of the Mortgage Bankers Act.

Code Department and Miscellaneous Agencies

COMMISSIONER OF BANKS AND TRUSTS COMPANIES
OFFICE OF SAVINGS AND LOAN COMMISSIONER
DEPARTMENT OF FINANCIAL INSTITUTIONS

Collective Study of the Programs and Functions Relative to Depository Institutions

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TO EXISTING RULES

Basis of Review: Five Year/Industry and Labor/Business
Regulation: Financial Institutions

Joint Committee Recommendation: August 17, 1983

Specific Recommendation:

During the course of the review of the various rules classified under the subarea of "Financial Institutions," it became evident that many of the historic differences between the three major types of financial institutions--banks, savings and loans, and credit unions--have been eroded to the degree that major differences in the services provided by each type of institution are no longer quite so distinct as in the past.

Much of the impetus for modification of the powers of these institutions has come from the federal level. In the past two years there have been two congressional enactments that have significantly contributed to this blurring of the distinctions between banks, savings and loan associations, and credit unions. The first of these was the "Depository Institutions Deregulation Act of 1980," Public Law 96-221. The stated purpose of this Act was to

facilitate the implementation of monetary policy, to provide for the gradual elimination of all limitations on the rates of interest which are payable on deposits and accounts, and to authorize interest-bearing transaction accounts,

In order to implement these purposes, the Act made a number of changes in the traditional differences between the 3 types of financial institutions. One of these changes provides for the phasing out, over a period of time, of what is known as "Regulation Q." Regulation Q was enacted to fix the maximum amounts of interest that could be paid on deposits by financial institutions. The original rationale of the regulation, which allowed savings and loan associations to pay higher interest rates than commercial banks, was to prevent disintermediation from savings and loan associations to commercial banks to protect the financial health of savings and loan organizations and the amount of money available for the home mortgage market. However, Regulation Q has been proven ineffective, in that when interest rates rose above the ceiling imposed by this regulation depositors took their money out of the savings and loans and invested it in money market funds. Hence, the disintermediation occurred despite, or maybe because of, Regulation Q. For these reasons, Congress mandated a phase out of this interest differential between savings and loan associations and commercial banks.

The second major provision of the Act permits insured depository institutions--commercial banks, savings and loan

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associations, and credit unions--to offer interest bearing transaction (or checking) accounts to individuals. Prior to this change, commercial banks were forbidden to pay interest on demand deposits.

The third major change found in this Act expands the asset powers of federal savings and loan associations. Traditionally, savings and loan associations were depositories and home mortgage lenders. This legislation gave federal savings and loan associations authorization to hold 10% of their assets in consumer loans, commercial paper, corporate debt securities and banker acceptances. They were also granted the power to offer trust services on the same basis as national banks.

The second federal enactment that impacts upon the distinction between the various types of financial institutions is the "Garn-St. Germain Depository Institutions Act of 1982," Public Law 99-320. The Act again addresses the elimination of interest rate differentials first addressed in the "Depository Institutions Deregulation Act of 1980." Section 326.327 of Title III of the Act eliminates the interest rate differential by January 1, 1984.

The Act continues to expand the powers of federal savings and loan associations to make them more similar to the powers possessed by commercial banks. Section 312 of Title III authorizes all federal associations to accept individual or corporate demand deposit accounts in connection with a corporate, commercial, agricultural or business loan relationship. Section 325 for the first time allows federal savings and loan associations to make commercial loans.

Finally, the Act allows depository institutions to offer a new account equivalent to, and competitive with, money market mutual funds.

Additional changes at the Federal level are continuing and blur the traditional distinctions between the types of institutions even further.

All of the changes in the distinctions between the various types of federal financial institutions have a direct bearing on the relationships between financial institutions on the state level. State regulations generally mirror those federal changes not actually mandated to state institutions. This is necessary in order to keep state financial institutions competitive with their federal counterparts.

State chartered banks are regulated by the commissioner of Banks and Trusts. State chartered savings and loan associations are regulated by the savings and loan commissioner, and state chartered credit unions are regulated by the Department of Financial Institutions. The functions of

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these financial institutions have become more and more similar, and as noted previously, in many cases, the services provided by each type of institutions are the same.

One of the principal responsibilities of the Five-Year Review program of the Joint Committee is the elimination or phasing out of outdated, overlapping or conflicting regulatory jurisdictions. (Ill. Rev. Stat., 1981, ch. 127, par. 1007.08(b)(3)) Pursuant to this statutory direction, it would appear appropriate that the regulatory programs and procedures of the Commissioner of Banks and Trusts, the Commissioner of Savings and Loans, and the Department of Financial Institutions be studied in an effort to determine whether or not there are any programs or functions of the agencies that may be administered more effectively if consolidated. The expertise for such a study would seem to be particularly that of the three agencies now responsible for this regulation. The Joint Committee, therefore, recommends that the Commissioner of Banks and Trust Companies, the Office of the Savings and Loan Commissioner, and the Department of Financial Institutions undertake a collective study of the programs and functions relative to the depository institutions under their control, and make appropriate recommendations to the General Assembly and the Governor relative to consolidation of the functions to avoid overlapping regulatory jurisdictions and duplication of administrative efforts.

SECTION FOUR

LEGISLATIVE ACTIVITY

In addition to reviewing proposed and existing agency rules, the Committee conducts a variety of legislative activities involving administrative rulemaking. These activities include developing and introducing Committee sponsored legislation, suggesting legislation to agencies or standing committees of the General Assembly to resolve problems with specific rules, and monitoring legislation which may have an impact on the Illinois Administrative Procedure Act or particular agency rules.

Bills Developed for Consideration During 1984

Each year the Committee develops new legislation as a result of its review activities. The legislation may address a particular problem discovered during a review, or it may be a proposed improvement in the Illinois Administrative Procedure Act.

This portion of the report provides a brief summary and background for each bill which the Committee has developed for consideration during 1984. The bills are divided into three categories:

- (1) Recommended bills - These bills have the support of the Joint Committee and will be sponsored by a Committee member.
- (2) Legislative concepts expected to be supported by agencies - Included in this category are bills supported by the Joint Committee for which the Committee anticipates agency support. These bills will be referred to the appropriate standing committees.
- (3) Legislative concepts not expected to be supported by agencies - Bills included in this category have Joint Committee support, but

the Committee anticipates agency opposition. These bills will be referred to the appropriate standing committees.

The full text of each bill is included in pages 363-434 of this report.

RECOMMENDED BILLS

BILL 1 (page 363)

Background

The Committee on several occasions has been faced with rules containing an automatic repeal date within the body of the rule. The Committee recommends that the validity of such provisions be clarified by amending the Illinois Administrative Procedure Act to provide that such provisions are effective, so long as notice of the impending repeal date is published in the Illinois Register.

Summary

Amends Illinois Administrative Procedure Act (Ill. Rev. Stat. 1981, ch. 127, par. 1001 et seq.) to authorize rules containing an automatic repealer and to provide that notice of the effective date of the repealer shall be published in the Illinois Register.

BILL 2 (page 365)

Background

In Illinois Bell Telephone Company v. Allphin, 95 Ill. App. 3d 115, 419 N.E.2d 1188, 50 Ill. Dec. 739 (1st Dist, 1981), the Department of Revenue argued that it could tax interstate telephone messages, even though the Department's own rules in effect during the period in question stated that such messages were not taxable. The court rejected this argument, holding

that the Department was bound by its own rules. The Joint Committee endorses the holding in Illinois Bell and believes that the Illinois Administrative Procedure Act should be amended to give legislative approval to the principle that an agency may not assert the invalidity of its own rules.

Summary

Amends Section 4 of the Illinois Administrative Procedure Act (Ill. Rev. State, 1981, ch. 127, par. 1004). Provides that no agency shall assert the invalidity of its own rule where an opposing party has relied on the rule.

BILL 3 (page 368)

DEPARTMENT OF NUCLEAR SAFETY

Background

At its November 17, 1983 meeting, the Committee issued six objections to the Department of Nuclear Safety rules for the licensing of persons in the practice of medical radiation technology. The Committee issued the objections based upon the Department's lack of statutory authority for the following:

1. To require an examination as a condition for licensure.
2. To charge an application fee for an examination.
3. To suspend or revoke a license.
4. To exempt students or other individuals from the requirements of the Act.
5. To issue a conditional or temporary license.
6. To require clinical practice as a condition for licensure.

The Committee does not believe that the Department has statutory authority under the Radiation Protection Act (Ill. Rev. Stat. 1981, ch. 111½, par. 211 et seq.) to adopt the comprehensive licensing programs established by the Department's rules. The Department refused either to modify or withdraw its rules. The Committee has introduced legislation (HB 2355) which voids the Department's adopted rules and requires the Department to

promulgate, by January 1, 1985, rules to administer the accreditation requirements of the Act.

Summary

Amends Sections 4 and 4.1 of the "Radiation Protection Act, " (Ill. Rev. Stat. 1981, ch. 111½, pars. 214 and 214.1) to provide that no person shall administer radiation to human beings after January 1, 1985, unless accredited by the Department of Nuclear Safety. Provides that the Department shall, by regulation, provide for accreditation based upon experience and skill of such persons who have been employed in the field of administering radiation to human beings, not less than 36 of the 60 months immediately preceding January 1, 1985. Adds Section 4.1(b), which provides that rules adopted by the Department entitled "Licensing Persons in the Practice of Medical Radiation Technology" (codified at 32 Ill. Adm. Code 401) shall be void as of the effective date of this amendatory act, and that regulations to administer the accreditation requirements of the Radiation Protection Act shall be adopted by the Department, in accordance with the provisions of the Illinois Administrative Procedure Act, no later than January 1, 1985.

LEGISLATIVE CONCEPTS EXPECTED TO BE SUPPORTED BY AGENCIES

BILL 4 (page 371)

DEPARTMENT OF FINANCIAL INSTITUTIONS

Background

The Committee reviewed the rules of the Department of Financial Institutions adopted under the Illinois Uniform Disposition of Unclaimed Property Act (Ill. Rev. Stat. 1981, ch. 141, par. 101 et seq.), as part of its report on Financial Institutions. Section 20 of this Act, the Committee concluded, presently requires that the Director of the Department personally preside at hearings conducted under the Act, although the Department's rules allow the Director to designate a hearing officer to conduct the hearings. Since the policy expressed in the Department's rules has substantial merit,

the Committee recommended that the statute be amended to authorize the Director's appointment of hearing officers.

Summary

Amends Section 20(a) Uniform Disposition of Unclaimed Property Act (Ill. Rev. Stat. 1981, ch. 141, par. 120(a)) to allow hearings to be conducted by a hearing officer appointed by the Director of the Department of Financial Institutions.

BILL 5 (page 374)

OFFICE OF THE SAVINGS AND LOAN COMMISSIONER

Background

As part of its report on Financial Institutions, the Committee reviewed the Savings and Loan Commission's rules governing mortgage bankers. Section 6 of the Mortgage Bankers Act (Ill. Rev. Stat. 1981, ch. 17, par. 2306) requires the Commissioner to compute a residential foreclosure rate on government-insured mortgages for each institution. This rate is used by the Commissioner to determine whether the institution is using sound underwriting practices in granting mortgage loans. The Committee discovered an apparent discrepancy, however, between the formula for determining the rate as presented in the Commissioner's rules and as required by Section 6. The Committee accordingly recommended that the statute be clarified to indicate that the rate is based upon loans originated by the lender, and not loans with which the lender has had "any connection," as the statute now requires.

Summary

Amends Section 6 of "AN ACT to provide for the regulation of mortgage bankers" (Ill. Rev. Stat. 1981, ch. 17, par. 2306) to clarify that the "Illinois residential foreclosure rate" refers to loans originated by the lender.

BILL 6 (page 378)

DEPARTMENT OF INSURANCE

Background

During its review of the Department of Insurance's proposed Workers' Compensation Reporting Rules (50 Ill. Adm. Code 2903), the Joint Committee uncovered an inherent inconsistency in Section 466(1) of the Insurance Code (Ill. Rev. Stat. 1981, ch. 73, par. 1065.13(1)). That section, which concerns reports which companies writing workers' compensation insurance must file with the Department, requires that the Department promulgate "statistical plans." These plans prescribe the types of information which must be reported to the Department and the manner of reporting such data. However, Section 466(1) also provides that the Department may not require a company to keep or report any information which the company does not keep in the normal course of business. The Committee recommended that legislation be prepared to resolve this inconsistency.

Summary

Amends Section 466(1) of the Insurance Code (Ill. Rev. Stat. 1981, ch. 73, par. 1065.13(1)). Provides that the Director of the Department of Insurance shall approve statistical plans required by Section 466(1), rather than promulgate such plans. Provides that such plans need not be adopted by rule, but shall be made available for public inspection.

BILL 7 (page 382)

DEPARTMENT OF INSURANCE

Background

As part of its five year review report on insurance regulations, the Committee reviewed the Department of Insurance rules adopted to implement the Religious and Charitable Risk Pooling Trust Act (Ill. Rev. Stat. 1981, ch. 148, par. 201 et seq.). The rules require that trusts subject to this Act observe the record-keeping requirements of Section 133 of the Illinois Insurance Code. However, the Religious and Charitable Risk Pooling Trust

Act contains no statutory authority for the Department to enforce this requirement. Accordingly, the Joint Committee recommended that legislation be prepared to authorize this requirement.

Summary

Amends Section 21 of the Religious and Charitable Risk Pooling Trust Act (Ill. Rev. Stat. 1981, ch. 148, par. 221) to make trust funds subject to the record-keeping requirements of Section 133 of the Insurance Code (Ill. Rev. Stat. 1981, ch. 73, par. 745).

BILL 8 (page 384)

DEPARTMENT OF INSURANCE

Background

The Committee's review of the rules of the Department of Insurance revealed an apparent conflict between Sections 43 and 56 of the Illinois Insurance Code, which relate to domestic mutual companies. Section 56 refers to the "original" surplus required by Section 43. Section 43, however, deals with "minimum" surplus, not "original" surplus. The Committee recommended that this inconsistency in the statutes be remedied.

Summary

Amends Section 56 of the Insurance Code (Ill. Rev. Stat. 1981, ch. 73, par. 668), which deals with accumulation of a guaranty fund or guaranty capital by domestic mutual companies, to clarify that such companies must maintain the minimum surplus required by Section 43 of the Code (Ill. Rev. Stat. 1981, ch. 73, par. 655) at all times.

BILL 9 (page 387)

DEPARTMENT OF PUBLIC HEALTH

Background

After the Department of Public Health was selected by the federal government to administer the Title X Family Planning Program, the Department proposed emergency rules to implement the program. During the Committee's review of these rules, it became apparent that the Department lacked specific statutory authority to promulgate rules for the administration of federal grant programs. The Committee therefore recommended that legislation be prepared to clarify the Department's rulemaking authority for federal grant programs pursuant to the Illinois Administrative Procedure Act.

Summary

Amends Section 55.27 of the Civil Administrative Code (Ill. Rev. Stat. 1981, ch. 127, par. 55.27) to authorize the Department of Public Health to adopt rules and regulations implementing federal grant programs.

BILL 10 (page 389)

DEPARTMENT OF PUBLIC HEALTH

Background

Amendments by the Department of Public Health to rules implementing the Nursing Home Care Reform Act of 1979 presented two problems with statutory authority. The rules, which concern the training and qualifications of nurse's aides, orderlies, and nurse technicians, provided (1) that, in certain situations, required training courses could be completed more than 120 days after employment, and (2) that an employee would be exempt from the training courses if he or she passed a proficiency test within 120 days of employment. The Committee concluded, however, that both of these policies conflict with a strict interpretation of the Act. Accordingly, the Committee recommended that amendatory legislation be prepared to statutorily authorize the Department's policies.

Summary

Amends Section 3-206(a)(5) of the Nursing Home Care Reform Act of 1979 (Ill. Rev. Stat. 1981, ch. 111½, par. 4153-206(a)(5)) to require that nurse's aides, orderlies, or nurse technicians who wish to take a proficiency examination in lieu of training courses pass such exam within 120 days of initial employment. Allows Department of Public Health to provide by rule for reasonable exceptions to requirement that the training courses be completed within 120 days of initial employment.

BILL 11 (page 393)

DEPARTMENT OF PUBLIC HEALTH

Background

The Committee's review of rules proposed by the Department of Public Health under the Alcoholism Treatment and Licensing Act (Ill. Rev. Stat. 1981, ch. 111½, par. 2301 et seq.) revealed two problems requiring legislative action. First, the Department's rules require that licensed facilities and programs make all information and records available to the Department which the Department may require to administer the Act; however, the rules do not specify the information which must be maintained. Second, the Department's rules require a license renewal fee from licensed programs, as well as licensed facilities. This policy is not sanctioned in the Act. The legislation drafted by the Committee addresses these two problems.

Summary

Amends Sections 10 and 11 of the Alcoholism Treatment and Licensing Act (Ill. Rev. Stat. 1981, ch. 111½, pars. 2310, 2311). Provides that the rules of the Department of Public Health shall specify the types of records which an alcoholism facility or program must make available for inspection. Provides that licensing fees apply to alcoholism programs as well as alcoholism facilities.

BILL 12 (page 396)

OFFICE OF THE ATTORNEY GENERAL

Background

Section 4(d) of the Illinois Solicitation Act requires that the Attorney General cancel the registration of any person or organization which fails to comply with various provisions of this Act. The Attorney General's rules, however, make such cancellation discretionary. The Committee recommended that the Act be amended to grant the Attorney General the needed discretion.

Summary

Amends Section 4(d) of "An Act to regulate solicitation and collection of funds for charitable purposes" (Ill. Rev. Stat. 1981, ch. 23, par. 5104(d)) to give the Attorney General discretion concerning whether to cancel a charitable organization's registration for failure to comply with the Act.

BILL 13 (page 400)

OFFICE OF THE ATTORNEY GENERAL

Background

The Committee's five year review report on Financial Institutions included rules adopted by the Attorney General under the Illinois Solicitation Act. Section 12 of the Illinois Solicitation Act currently requires that the Attorney General cancel the registration of any charitable organization or fund-raiser which advertises the fact of its registration as part of its solicitation activities. However, the Attorney General's rules give the Attorney General discretion as to whether to cancel a registration for a violation of Section 12. To correct this conflict the Committee recommended that the Act be amended to authorize the Attorney General's exercise of discretion where violations of Section 12 occur.

Summary

Amends Section 12 of "An Act to regulate solicitation and collection of funds for charitable purposes" (Ill. Rev. Stat. 1981, ch. 23, par. 5112) to

give the Attorney General discretion concerning whether to cancel the registration of a person or organization which violates Section 12 by advertising its registration.

BILL 14 (page 402)

OFFICE OF THE STATE FIRE MARSHAL

Background

At its November 1983 meeting, the Committee concluded that proposed rules of the State Fire Marshal exceeded the rulemaking authority granted in "AN ACT to regulate the storage, transportation, sale and use of gasoline and volatile oils" (Ill. Rev. Stat. 1981, ch. 127½, par. 153 et seq.) in two respects. First, the Fire Marshal does not have statutory authority to regulate abandoned bulk storage plants. Second, the Fire Marshal does not have the authority to require that underground storage tank repair contractors file a certificate of insurance with the Fire Marshal. The Committee recommended that the necessary statutory authority be obtained if these policies are continued.

Summary

Amends Section 2 of "AN ACT to regulate the storage, transportation, sale and use of gasoline and volatile oils" (Ill. Rev. Stat. 1981, ch. 127½, par. 154) to authorize the State Fire Marshal to adopt rules and regulations (1) requiring underground storage tank repair contractors to file a certificate of insurance with the State Fire Marshal, and (2) governing the dismantling of abandoned bulk storage plants.

LEGISLATIVE CONCEPTS NOT EXPECTED TO BE SUPPORTED BY AGENCIES

BILL 15 (page 404)

DEPARTMENT OF FINANCIAL INSTITUTIONS

Background

Two issues of statutory authority arose during the Committee's review of the Department of Financial Institutions' proposed rules governing the Uniform

Disposition of Unclaimed Property Act. First, the rules require that institutions having no property to report nevertheless must file a periodic report with the Department indicating this fact. The Committee concluded, however, that Section 11 of the Act regarding reports (Ill. Rev. Stat. 1981, ch. 141, par. 111) does not sanction such "negative reports." The Committee believes that the Act should be amended to clarify that the Department may not require negative reports. Second, the rules purport to govern certain trusts falling within the definition of an "active express trust" under Illinois case law; however, Section 7a of the Act states that the Act does not apply to active express trusts. The Committee therefore recommends that the Act be amended to include a definition of "active express trust" which is in accordance with Illinois case law.

Summary

Amends Section 1 and Section 23 of the Uniform Disposition of Unclaimed Property Act (Ill. Rev. Stat. 1982 Supp., ch. 141, par.s 101, 123). Defines "active express trust." Provides that the Director of the Department of Financial Institutions shall not require the filing of routine periodic reports indicating whether or not property subject to the Act is being held.

BILL 16 (page 408)

DEPARTMENT OF PUBLIC AID

Background

Under Section 5-5.5 of the Public Aid Code (Ill. Rev. Stat. 1981, ch. 23, par. 5-5.5), the Department of Public Aid determines the reimbursement rate for long-term care facilities by conducting patient assessments. The assessments are done by a Public Health nurse who visits each facility to observe the residents and review the facility's records. While the Department's policy is to allow a representative of the facility to be present during the assessments, this policy does not appear in the Department's rules. In response to the Department's refusal to include this policy in its rules, the Committee is drafting legislation outlining this important right of long-term care facilities.

Summary

Amends the Public Aid Code to provide that skilled nursing and intermediate care facilities have the right to have a representative of the facility present during patient assessments conducted to determine the facility's payment rate.

BILL 17 (page 412)

DEPARTMENT OF PUBLIC AID

Background

Various rules of the Department of Public Aid require that aid applicants or recipients "verify" information submitted to the Department. The Committee objected to these rules on the ground that they do not clearly state the Department's policy regarding acceptable means of verification. In response to the Department's refusal to modify the rules to address the Committee's objections, the Committee directed that legislation be prepared which provides that whenever a rule of the Department requires that information be verified, the rule shall specify the acceptable means of verification or shall list examples of acceptable verification.

Summary

Amends Section 12-13 of the Public Aid Code (Ill. Rev. Stat. 1981, ch. 23, par. 12-13) to provide that whenever a rule of the Department of Public Aid requires that applicants or recipients verify information submitted to the Department, the rule must specify the acceptable means of verification or list examples of acceptable verification.

BILL 18 (page 415)

DEPARTMENT OF PUBLIC AID

Background

During its review of proposed rules of the Department of Public Aid, the Committee discovered a number of policies governing hospital reimbursement

for inpatient and outpatient services that should be included in the Department's rules. These policies include the Department's maximum reimbursement levels for outpatient and clinic services, the payment rate for outpatient renal dialysis, surgical procedures which must be performed in a hospital outpatient or clinic setting to be reimbursed, the Department's complete reimbursement methodology for inpatient services, and a comprehensive appeal procedure for hospitals wishing to contest their payment rates. In light of the Department's failure to specify these policies in their rules, the Committee directed that legislation be drafted to require the Department to include these policies in the Department's rules.

Summary

Adds Section 5-5.11a to the Public Aid Code (Ill. Rev. Stat. 1981, ch. 23, par. 5-5.11a). Specifies various provisions that the Department of Public Aid must include in its rules governing hospital reimbursement.

BILL 19 (page 417)

DEPARTMENT OF PUBLIC AID

Background

Section 5-5 of the Public Aid Code authorizes the Department of Public Aid to adopt rules specifying the types of medical services which various classes of recipients may receive. Section 5-5 specifies that the classification is to be based upon the classes of persons designated in Section 502 of the Code. In reviewing the Department's rules, however, the Committee concluded that the Department had exceeded its statutory authority by establishing subclasses of persons who are eligible for different medical services, rather than adhering to the classes designated in Section 5-2. The Committee recommends that Section 5-5 of the code be amended to clarify that the Department is prohibited from establishing such subclasses, and must classify eligible services based only on the classes of persons designated in Section 5-2.

Summary

Amends Section 5-5 of the Public Aid Code (Ill. Rev. Stat. 1982 Supp., ch. 23, par. 5-5). Provides that the Department of Public Aid in establishing classes of persons who are eligible for various medical services shall be limited to the classes specified in Section 5-2 of the Code.

BILL 20 (page 423)

DEPARTMENT OF PUBLIC AID

Background

Section 5-5.6a of the Public Aid Code requires that the Department of Public Aid, no later than July 1, 1982, promulgate new methods for reimbursing skilled and intermediate care nursing facilities which care for recipients of medical assistance. Prior to July 1, 1982 the Department had used what is known as a "point count" system for determining a facility's reimbursement rate. The Department of Public Aid took the position, however, that Section 5-5.6a does not apply to two types of nursing facilities - skilled nursing facilities for pediatrics and intermediate care facilities for the mentally retarded. After the Department refused to amend its rules governing these facilities to abandon the point count system and establish new reimbursement procedures, the Committee directed that legislation be prepared to amend Section 5-5.6a to specify that it applies to the nursing facilities in question.

Summary

Amends Section 5-5.6a of the Public Aid Code (Ill. Rev. Stat. 1982 Supp., ch. 23, par. 5-5.6a). Provides that Section 5-5.6a applies to skilled care facilities for pediatrics and intermediate care facilities for the mentally retarded.

DEPARTMENT OF PUBLIC AID

Background

The Committee's review of rules proposed by the Department of Public Aid governing reimbursement of skilled nursing facilities for pediatrics and intermediate care facilities for the mentally retarded revealed several problems. These included (1) the failure to specify the Department's standards for determining whether a facility has adequate staff; (2) the omission of standards used to determine whether the Department will reduce a facility's payment rate and seek repayment of amounts previously paid because the facility's staffing was found to be inadequate; and (3) the failure to provide an accurate and complete statement of the manner of converting a facility's "point counts" into reimbursement rates. The Committee recommended that legislation be drafted to require the Department to include these policies in the Department's rules.

Summary

Amends Section 5-5.5 of the Public Aid Code (Ill. Rev. Stat. 1982 Supp., ch. 23, par. 5-5.5). Specifies various provisions that must be included in the rules of the Department of Public Aid if the Department uses a "point count" system to determine the payment rate for nursing facilities.

PRIOR RECOMMENDATIONS FOR LEGISLATION

Ten bills recommended by the Committee were enacted into law during 1983. The following summary lists the status of each bill recommended by the Committee for consideration during 1983.

HB853 (Public Act 83-638) amends the incorporation by reference requirements for agency rules established by the Illinois Administrative Procedure Act. The Act deletes the requirement that the agency file a copy of the incorporated material with the Secretary of State as well as maintain a copy at the agency's office.

SB583 (Public Act 83-891) deletes the exemption from the Illinois Administrative Procedure Act for State Board of Education statements, guidelines, and policies which do not have the force of law.

HB1447 would delete the provision of Section 4(c) of the Illinois Administrative Procedure Act under which agencies rules are valid if a person has "actual knowledge" of the rule, even if the rule has not been filed with the Secretary of State. The bill has been placed in interim study.

SB487 (Public Act 83-256) amends various travel statutes of State agencies to delete the requirement that the agencies' travel rules be filed in accordance with the Illinois Administrative Procedure Act.

SB476 (Public Act 83-1036) amends the Coin-Operated Amusement Device Tax Act to change the imposition of the tax from \$10 on each coin slot to \$10 on each device.

SB477 would amend Section 9 of the Cigarette Tax Act (Ill. Rev. Stat. 1981, ch. 120, par. 453.9) to delete the provision requiring every distributor who is not a manufacturer of cigarettes to file a return with the Department of Revenue showing the quantity of cigarettes manufactured. The bill has been placed in interim study.

SB478 (Public Act 83-160) amends the Messages Tax Act, the Gas Revenue Tax Act, the Public Utilities Revenue Act, the Cigarette Tax Act, and the Liquor Control Act to provide that credit memoranda or refunds issued by the Department of Revenue earn interest.

HB740 would amend Section 5-13 of the Illinois Savings and Loan Act (Ill. Rev. Stat. 1981, ch. 17, par. 3147) to provide that property appraisals and appraisers' qualifications are subject to regulation by the Commissioner of Savings and Loans. The bill has been tabled pursuant to Rule 79E.

SB454 (Public Act 83-159) amends Section 9 of the lead Poisoning Prevention Act (Ill. Rev. Stat. 1981, ch. 111½, par. 1309) to authorize the Department of Public Health to extend the thirty day period which property owners are granted to remove lead substances, if the condition is not an imminent health hazard.

SB455 (Public Act 83-255) amends Section 10 of the Hospital Licensing Act (Ill. Rev. Stat. 1981, ch. 111½, par. 151) to require the Department of Public Health to adopt rules setting forth standards for determining when emergency action is required to terminate a research program or experiment conducted by a licensed hospital.

HB 728 (Public Act 83-175) transfers from the Department of Agriculture to the Department of Public Health the responsibility for administering the law in regard to salvage warehouses.

HB729 (Public Act 83-494) repealed the obsolete "Act to regulate the sale of paints, oils and other articles or compounds used in connection therewith."

SB419 would address an overlap between the Department of Corrections and the Department's School District by providing that the school district is part of the administrative structure of the Department. The bill is awaiting Senate concurrence to a House amendment.

SB751 would address a regulatory overlap concerning commercial driving schools by amending the Vehicle Code to provide that State Board of

Education approval is not required for instructors who teach exclusively in a commercial driving school. The bill has been placed in interim study.

HB784 (Public Act 83-1072) amends the Illinois Natural Areas Preservation Act (Ill. Rev. Stat. 1981, ch. 105, par. 701 et seq.) to eliminate the joint rulemaking authority of the Illinois Nature Preserves Commission and the Department of Conservation. Under Public Act 83-1072 the Commission will adopt rules with the advice and approval of the Department.



85rd GENERAL ASSEMBLY State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL 1

SYNOPSIS: (Ch. 127, new par. 1005.04)

Amends The Illinois Administrative Procedure Act to permit a rule to provide for its automatic repeal on a date specified in the rule, provided that notice of repeal is published in the Illinois Register not less than 30 nor more than 60 days prior to the effective date of the repeal. Not applicable to emergency rules.

LRB8307672RCsb

A BILL FOR

1 341 ACT to add Section 5.04 to "The Illinois 48
2 Administrative Procedure Act", approved September 22, 1975, 49
3 as amended. 50

4 Be it enacted by the People of the State of Illinois, 54
5 represented in the General Assembly:

6 Section 1. Section 5.04 is added to "The Illinois 56
7 Administrative Procedure Act", approved September 22, 1975, 57
8 as amended, the added Section to read as follows:

(Ch. 127, new par. 1005.04) 59

Sec. 5.04. Automatic repeal of rules. A rule may provide 61
9 for its automatic repeal on a date specified in the rule. The 62
10 repeal shall be effective on the date specified, provided 63
11 that notice of the repeal is published in the Illinois 64
12 Register not less than 30 nor more than 60 days prior to the 65
13 effective date of the repeal. This Section shall not apply to 66
14 any rules filed pursuant to Section 5.02 of this Act.

85rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL 2

SYNOPSIS: (Ch. 127, par. 1004)

Amends The Illinois Administrative Procedure Act. Provides that no agency shall assert the invalidity of one of its own rules upon which an opposing party has relied.

LRB8307671JMcB

A BILL FOR

1	AN ACT to amend Section 4 of "The Illinois Administrative	49
2	Procedure Act", approved September 22, 1975, as amended.	51
3	<u>Be it enacted by the People of the State of Illinois,</u>	55
4	<u>represented in the General Assembly:</u>	
5	Section 1. Section 4 of "The Illinois Administrative	57
6	Procedure Act", approved September 22, 1975, as amended, is	58
7	amended to read as follows:	
	(Ch. 127, par. 1004)	50
8	Sec. 4. Adoption of Rules; Public Information,	52
9	Availability of Rules.) (a) In addition to other rule-making	63
10	requirements imposed by law, each agency shall:	64
11	1. adopt rules of practice setting forth the nature and	66
12	requirements of all formal hearings;	67
13	2. make available for public inspection all rules	69
14	adopted by the agency in the discharge of its functions.	70
15	(b) Each agency shall make available for public	72
16	inspection all final orders, decisions and opinions, except	73
17	those deemed confidential by state or federal statute and any	74
18	trade secrets.	
19	(c) No agency rule is valid or effective against any	76
20	person or party, nor may it be invoked by the agency for any	77
21	purpose, until it has been made available for public	78
22	inspection and filed with the Secretary of State as required	79
23	by this Act. This provision is not applicable in favor of	
24	any person or party who has actual knowledge thereof.	80
25	<u>However, no agency shall assert the invalidity of a rule</u>	81
26	<u>which it has adopted pursuant to this Act when an opposing</u>	82
27	<u>party has relied upon such rule.</u>	
28	(d) Rule-making which creates or expands a State mandate	84
29	on units of local government, school districts, or community	85
30	college districts is subject to the State Mandates Act. The	86
31	required Statement of Statewide Policy Objectives shall be	87
32	published in the Illinois Register at the same time that the	

- | | | |
|---|---|----|
| 1 | first notice under Section 5.01 is published or when the rule | 38 |
| 2 | is published under Section 5.02 or 5.03. | 90 |

83rd GENERAL ASSEMBLY State of Illinois

1983 and 1984

INTRODUCED _____ BY

BILL 3

SYNOPSIS:

(Ch. 111 1/2, pars. 214 and 214.1)

Amends the Radiation Protection Act. Delays until 1985 the accreditation requirement for persons administering radiation to humans under supervision of certain medical licensees. Extends the period during which to gain the experience needed to qualify for accreditation. Voids certain licensing rules of the Department of Nuclear Safety and requires the Department's adoption of accreditation rules by January 1, 1985. Effective immediately.

LRB8307229JMjs

A BILL FOR

1 AN ACT to amend Sections 4 and 4.1 of the "Radiation 54
2 Protection Act", approved July 17, 1959, as amended. 56

3 Be it enacted by the People of the State of Illinois, 60
4 represented in the General Assembly:

5 Section 1. Sections 4 and 4.1 of the "Radiation 62
6 Protection Act", approved July 17, 1959, as amended, are 63
7 amended to read as follows:

(Ch. 111 1/2, par. 214) 65

8 Sec. 4. Limitations on application of radiation to human 67
9 beings. No person shall intentionally administer radiation 68
10 to a human being unless such person is licensed to practice a 69
11 treatment of human ailments by virtue of the Illinois 70
12 Medical, Dental or Podiatry Practice Acts, or, as technician, 71
13 nurse or other assistant, is acting under the supervision, 72
14 prescription or direction of such licensed person. However,
15 no such technician, nurse or other assistant acting under the 73
16 supervision of a person licensed under the "Medical Practice 74
17 Act", approved June 30, 1923, as amended, or under "An Act to 75
18 regulate the practice of podiatry in the State of Illinois", 76
19 approved April 26, 1917, as amended, shall administer 77
20 radiation to human beings after January 1, ~~1935~~ ~~1934~~ unless 78
21 accredited by the Department of Nuclear Safety. No person 80
22 authorized by this section to apply ionizing radiation shall
23 apply such radiation except to those parts of the human body 81
24 specified in the Act under which such person or his 82
25 supervisor is licensed. Nothing in this Section shall be 83
26 deemed to relieve a person from complying with the provisions 84
27 of Section 6a. 85

(Ch. 111 1/2, par. 214.1) 87

28 Sec. 4.1. (3) The Department shall promulgate such rules 89
29 and regulations as are necessary to establish a minimum 90
30 course of education and continuing education requirements in 91
31 the administration of radiation to human beings to be met by 92

1 all nurses, technicians, or other assistants who administer 92
2 radiation to human beings under the supervision of a person 93
3 licensed under the Illinois Medical or Podiatry Practice 94
4 Acts. The rules and regulations of the Department shall be 95
5 consistent with national standards in regard to the 96
6 protection of the health and safety of the general public.
7 The Department shall by rule or regulation provide for 97
8 accreditation based upon experience and skill for nurses, 98
9 technicians, and other assistants who have been employed, in 99
10 the field of administering radiation to human beings, not
11 less than 36 ~~24~~ of the 60 ~~48~~ months immediately preceding 100
12 January 1, 1985 ~~1984~~. 101
13 (b) Those rules adopted by the Department entitled 103
14 "Licensing Persons in the Practice of Medical Radiation 104
15 Technology", effective January 1, 1984, and codified at 32 105
16 Illinois Administrative Code Part 401, shall be void as of 106
17 the effective date of this amendatory Act of 1984. Rules and
18 regulations to administer the accreditation requirements of 107
19 this Act shall be adopted by the Department, in accordance 108
20 with the provisions of The Illinois Administrative Procedure 109
21 Act, to be effective not later than January 1, 1985.
22 Section 2. This Act takes effect upon becoming law. 112

83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL 4

SYNOPSIS: (Ch. 141, par. 120)

Amends the Uniform Disposition of Unclaimed Property Act. Provides that hearings upon claims filed under the Act shall be conducted by the Director of the Department of Financial Institutions or a hearing officer designated by him. Requires that the Director review the findings and decision of each hearing and issue a final written decision.

LRB8307676JMcB

Fiscal Note Act
may be applicable

A BILL FOR

1 AN ACT to amend Section 20 of the "Uniform Disposition of 52
 2 Unclaimed Property Act", approved August 17, 1961, as 53
 3 amended. 54

4 Be it enacted by the People of the State of Illinois, 56
 5 represented in the General Assembly:

6 Section 1. Section 20 of the "Uniform Disposition of 60
 7 Unclaimed Property Act", approved August 17, 1961, as 61
 8 amended, is amended to read as follows:

(Ch. 141, par. 120) 63

9 Sec. 20. (a) The Director shall consider any claim filed 65
 10 under this Act and may, in his discretion, hold a hearing and 66
 11 receive evidence concerning it. Such hearing shall be 67
 12 conducted by the Director or by a hearing officer designated 68
 13 by him. No hearings shall be held if the payment of the claim 69
 14 is ordered by a court, if the claimant is under court 70
 15 jurisdiction, or if the claim is paid under Article XXV of 71
 16 the Probate Act of 1975, as now and hereafter amended. The 72
 17 Director or hearing officer shall prepare a finding and a 73
 18 decision in writing on each hearing, stating the substance of
 19 any evidence heard by him, his findings of fact in respect 74
 20 thereto, and the reasons for his decision. The Director 75
 21 shall review the findings and decision of each hearing and 76
 22 issue a final written decision. The final decision shall be 77
 23 a public record. 78

24 (b) If the claim is allowed, and after deducting an 80
 25 amount not to exceed \$20 to cover the cost of notice 81
 26 publication and related clerical expenses, the State 82
 27 Treasurer shall make payment forthwith, upon notification by 83
 28 the Director.

29 (c) In order to carry out the purpose of this Act, the 85
 30 fees of any person or company for discovering descheated or 86
 31 abandoned funds in the custody of the Unclaimed Property 87
 32 Division of the Department of Financial Institutions for and 88

1	on behalf of a claimant shall be limited to not more than 10%	89
2	of the amount collected, unless the amount collected is	90
3	\$1,000.00 or less.	91
4	This Section shall not apply to the fees of an attorney	92
5	at law duly appointed to practice in a State of the United	93
6	States who is employed by a claimant on a contractual basis.	

83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL 5

SYNOPSIS: (Ch. 17, par. 2306)

Amends "An Act to provide for the regulation of mortgage bankers", to specify that the Illinois residential foreclosure rate relates to loans originated by a lender.

LRB8307280JSsb

A BILL FOR

1 AN ACT to amend Section 5 of "An Act to provide for the 48
2 regulation of mortgage bankers", approved September 15, 1977, 49
3 as amended. 50

4 be it enacted by the People of the State of Illinois. 54
5 represented in the General Assembly:

6 Section 1. Section 6 of "An Act to provide for the 56
7 regulation of mortgage bankers", approved September 15, 1977, 57
8 as amended, is amended to read as follows:

(Ch. 17, par. 2306) 59

9 Sec. 5. No mortgage banker shall engage in the business 61
10 of mortgage banking unless he holds a valid license issued to 62
11 him under this Act.

12 The national residential mortgage foreclosure rate on 64
13 government insured mortgages shall be determined annually by 65
14 the Commissioner. The national residential mortgage 66
15 foreclosure rate on government insured mortgages shall be the 67
16 quotient determined by dividing (a) the number of foreclosure
17 proceedings on government-insured loans instituted in the 68
18 United States during the 5 immediately preceding calendar 69
19 years by (b) the number of government insured residential 70
20 mortgage loans originated in the United States during the 5
21 immediately preceding calendar years. 71

22 During the first year following the effective date of 73
23 this Act, the statewide maximum foreclosure rate on 74
24 government insured mortgages shall be a figure 2 times the 75
25 national residential mortgage foreclosure rate on government
26 insured mortgages. During the second year following the 76
27 effective date of this Act the statewide maximum foreclosure 77
28 rate on government insured mortgages shall be a figure 1.5 78
29 times the national residential mortgage foreclosure rate on 79
30 government insured mortgages. During the third year following
31 the effective date of this Act the statewide maximum 80
32 foreclosure rate on government insured mortgages shall be a 81

1 figure 1.25 times the national residential mortgage 82
 2 foreclosure rate on government insured mortgages. During the 33
 3 fourth year following the effective date of this Act the 34
 4 statewide maximum foreclosure rate on government insured 35
 5 mortgages shall be a figure the same as the national
 6 residential foreclosure rate on government insured mortgages. 36
 7 The statewide maximum foreclosure rate shall be the 88
 8 figure used by the Commissioner to monitor the foreclosure 39
 9 performance of mortgage bankers.
 10 The Commissioner shall conduct an audit of each mortgage 91
 11 banker who has a foreclosure rate above the statewide maximum 92
 12 foreclosure rate, with the purpose of determining whether the 93
 13 rate has resulted from practices which deviate from sound and 94
 14 accepted mortgage underwriting practices, including but not 95
 15 limited to credit fraud, appraisal fraud and property
 16 inspection fraud. For the purposes of conducting such audit, 96
 17 the Commissioner may accept materials prepared for the U.S. 97
 18 Department of Housing and Urban Development.
 19 The Illinois residential foreclosure rate on government 99
 20 insured mortgages for a particular mortgage banker shall be 100
 21 the quotient determined by dividing (a) the number of 101
 22 foreclosure proceedings instituted in Illinois during the 5 102
 23 immediately preceding calendar years on government insured
 24 residential mortgage loans with which such licensee has 103
 25 originated within such period ~~had any connection~~ by (b) the 104
 26 number of government insured residential mortgage loans 106
 27 originated in Illinois by such licensee during the 5
 28 immediately preceding calendar years ~~with which such~~ 108
 29 ~~licensee has had any connection~~. Except as provided in 109
 30 Section 7 of this Act, any mortgage banker who shows to the 110
 31 satisfaction of the Commissioner that he will comply with the 111
 32 requirements and regulations of Sections 9 and 10 of this Act 112
 33 shall be issued a license upon payment of a \$500 license fee. 113
 34 All licenses issued under this Act shall expire on the next 114
 35 following April 30.

1 The Commissioner shall hold public hearings and take 115
2 testimony from the public concerning the licensee during the 116
3 course of this audit. The Commissioner shall, at the 117
4 conclusion of the audit, make public notice of his findings
5 and shall also make public notice as to any action taken with 118
6 respect to the licensee. If any action is taken with respect 119
7 to the licensee, the Commissioner shall make public notice as 120
8 to the nature of that action. The Commissioner shall also 121
9 give full consideration to the findings of this audit 122
10 whenever reapplication is made by the licensee for a new
11 license under this Act.

12 The Commissioner shall develop, with each licensee who 124
13 has a foreclosure rate above the statewide maximum 125
14 foreclosure rate, a plan which shall be designed to reduce 126
15 that licensee's Illinois residential foreclosure rate on 127
16 government insured mortgages to a figure below the statewide
17 maximum foreclosure rate on government insured mortgages. 128

18 Whenever the Commissioner finds that a mortgage banker's 130
19 foreclosure rate on government insured mortgages is unusually 131
20 high within a particular geographic area, he shall require 132
21 that mortgage banker to submit such information as is 133
22 necessary to determine whether that mortgage banker's
23 practices have constituted credit fraud, appraisal fraud or 134
24 property inspection fraud. The Commissioner shall promulgate 135
25 such regulations as are necessary to determine whether any 136
26 mortgage banker's foreclosure rate is unusually high within
27 a particular area. 137

83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL 6

SYNOPSIS: (Ch. 73, par. 1065.13)

Amends the Insurance Code to provide that the Director of Insurance shall approve statistical plans reasonably adopted to each of the rating systems on file with him. Provides that the approved plans shall be filed with the Secretary of State.

LRB8307699BMMc

Fiscal Note Act
may be applicable

A BILL FOR

1 AN ACT to amend Section 466 of the "Illinois Insurance 50
2 Code", approved June 29, 1937, as amended. 52

3 Be it enacted by the People of the State of Illinois, 53
4 represented in the General Assembly:

5 Section 1. Section 466 of the "Illinois Insurance Code", 56
6 approved June 29, 1937, as amended, is amended to read as 59
7 follows:

(Ch. 73, par. 1065.13) 61

8 Sec. 466. Rate administration. (1) Recording and 64
9 Reporting of Loss and Expense Experience.

10 The Director shall promulgate reasonable rules and shall 66
11 approve statistical plans, reasonably adapted to each of the 67
12 rating systems on file with him, which may be modified from 68
13 time to time and which shall be used thereafter by each 69
14 company in the recording and reporting of its loss and
15 countrywide expense experience, in order that the experience 70
16 of all companies may be made available at least annually in 71
17 such form and detail as may be necessary to aid him in 72
18 determining whether rating systems comply with the standards 73
19 set forth in Section 456. An approved statistical plan need
20 not be adopted as a rule, but shall be made available for 74
21 public inspection and a copy of the plan shall be filed with 75
22 the Secretary of State. Such rules and plans may also provide 76
23 for the recording and reporting of expense experience items 77
24 which are specially applicable to this state and are not 78
25 susceptible of determination by a prorating of countrywide 79
26 expense experience. In promulgating such rules and approving 80
27 plans, the Director shall give due consideration to the
28 rating systems on file with him and in order that such rules 81
29 and plans may be as uniform as is practicable among the 82
30 several states, to the rules and to the form of the plans 83
31 used for such rating systems in other states. No company 84
32 shall be required to record or report any experience on an

1 experience classification which it does not use in the making 31
 2 of its rates or to record or report its experience on any 32
 3 basis or statistical plan that differs from that which is 33
 4 regularly employed and used in the usual course of such 34
 5 company's business, nor shall any company be required to
 6 record or report its loss experience on a classification 35
 7 basis that is inconsistent with the rating system filed by 36
 8 it, nor shall it be required to report such experience to any 37
 9 rating organization of which it is not a member or 38
 10 subscriber, or to an agency operated by or subject to the
 11 control of such a rating organization. Any company not 39
 12 reporting such experience to a rating organization or other 40
 13 agency designated by the Director, shall report such 41
 14 experience to the Director. The Director may designate one or
 15 more rating organizations or other agencies to assist him in 42
 16 gathering all such experience and in making compilations 43
 17 thereof. The experience of any company filed with the 44
 18 Director shall be deemed confidential and shall not be 45
 19 revealed by the Director to any other company or other
 20 person, provided, however, that the Director may make 46
 21 compilations of all experience, including the experience of 47
 22 any such company, or of such experience and the compilation 48
 23 made by the designated rating organization or other agency.
 24 All such compilations, whether made by the Director or by any 49
 25 designated rating organization or other agency, shall be made 50
 26 available, subject to reasonable rules promulgated by the 51
 27 Director, to companies and rating organizations. 52
 28 (2) Interchange of Rating Plan Data 53
 29 Reasonable rules and plans may be promulgated by the 54
 30 Director for the interchange of data necessary for the 55
 31 application of rating plans. 56
 32 (3) Consultation with Other States 57
 33 In order to further uniform administration of rate 58
 34 regulatory laws, the Director and every company and rating 59
 35 organization may exchange information and experience data 60

1	with insurance supervisory officials, companies and rating	114
2	organizations in other states and may consult with them with	
3	respect to rate making and the application of rating systems.	115
4	(4) Rules and Regulations	117
5	The Director may make reasonable rules and regulations	117
6	necessary to affect the purpose of this Article.	122

83rd GENERAL ASSEMBLY
State of Illinois

1983 and 1984

INTRODUCED _____ BY

BILL 7

SYNOPSIS: (Ch. 148, par. 221)

Amends the Religious and Charitable Pooling Trust Act to make trust funds subject to the record-keeping requirements of Section 133 of the Insurance Code.

LRB8307282BMjw

A BILL FOR

1 AN ACT to amend Section 21 of the "Religious and 45
2 Charitable Risk Pooling Trust Act", approved September 9, 46
3 1977, as amended. 47

4 Be it enacted by the People of the State of Illinois, 51
5 represented in the General Assembly:

6 Section 1. Section 21 of the "Religious and Charitable 53
7 Risk Pooling Trust Act", approved September 9, 1977, as 54
8 amended, is amended to read as follows:

(Ch. 148, par. 221) .. 56

9 Sec. 21. Trust funds established under this Act and all 58
10 persons interested therein or dealing therewith shall be 59
11 subject to the provisions of Sections 133, 140, 401, 402 and
12 403 of the Illinois Insurance Code, as amended. 62

83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL 8

SYNOPSIS: (Ch. 73, par. 668)

Amends the Illinois Insurance Code to specify that with respect to a guaranty fund or guaranty capital fund accumulated by domestic mutual companies, such company must maintain the statutorily required minimum surplus at all times.

LRB8307281JSjs

A BILL FOR

1 AN ACT to amend Section 56 of the "Illinois Insurance 51
2 Code", approved June 29, 1937, as amended. 53

3 Be it enacted by the People of the State of Illinois, 57
4 represented in the General Assembly:

5 Section 1. Section 56 of the "Illinois Insurance Code", 59
6 approved June 29, 1937, as amended, is amended to read as 60
7 follows:

(Ch. 73, par. 668) 62

8 Sec. 56. Accumulation of guaranty fund or guaranty 65
9 capital. Any company subject to the provisions of this 66
10 article, may provide for a surplus either by accumulating a 67
11 guaranty fund or a guaranty capital as follows: 68

12 (a) Guaranty Fund. It may accumulate a guaranty fund by 70
13 borrowing money at an interest rate not exceeding seven per 71
14 centum per annum under agreements approved by the Director 72
15 which shall provide that such loan and the interest thereon 73
16 shall be repaid only out of the surplus of such company in 74
17 excess of the minimum original surplus required of such 75
18 company by Section 43. Such excess of surplus shall be 76
19 calculated upon the fair market value of the assets of the 77
20 company, and such guaranty loan fund shall constitute and be 77
21 enforceable as a liability of the company only as against such 78
22 excess of surplus. Any unpaid balance of such guaranty fund
23 loan shall be reported in the annual statement to be filed 79
24 with the Director and no repayment of said fund shall be made 80
25 unless the Director shall have been notified by the company 81
26 at least thirty days in advance of such proposed repayment. 82

27 (b) Guaranty Capital. It may in addition to any advances 84
28 provided for herein, establish and maintain a guaranty 85
29 capital divided into shares having a par value of not more 86
30 than one hundred dollars nor less than five dollars each. The 87
31 guaranty capital shall be applied to the payment of losses 88
32 only when the company has exhausted its assets in excess of

1 unearned premium reserve and other liabilities; and when thus 89
2 impaired the directors may make good the whole or any part of 90
3 it by assessment on its policyholders as provided for in 91
4 Section 60. Said guaranty capital may, by vote of the board 92
5 of directors of the company and the written consent of the 93
6 Director be reduced or retired by any amount, provided that
7 the net surplus of the company together with the remaining 94
8 guaranty capital shall equal or exceed the amount of minimum 95
9 ~~original~~ surplus required by Section 43, and due notice of 96
10 such proposed action on the part of the company shall be 97
11 published in a newspaper of general circulation, approved by
12 the Director, not less than once each week for at least four 98
13 consecutive weeks before such action is taken. No company 99
14 with a guaranty capital, which has ceased to do business, 100
15 shall divide any part of its assets or guaranty capital among 101
16 its shareholders unless it has paid or it has otherwise been
17 released from its policy obligations. The holders of the 102
18 shares of such guaranty capital shall be entitled to interest 103
19 not exceeding seven per centum per annum, payable from the 104
20 surplus in excess of the minimum ~~original~~ surplus required of 105
21 the company by Section 43. In the event of dissolution and 106
22 liquidation of such a company after the retirement of all
23 outstanding obligations of the company, the holders of such 107
24 shares of guaranty capital shall be entitled to a 108
25 preferential right in the assets of such company equal to the 109
26 par value of their share of such guaranty capital before any
27 distribution to members. 110

83rd GENERAL ASSEMBLY
State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL 9

SYNOPSIS: (Ch. 127, par. 55.27)

Amends The Civil Administrative Code of Illinois. Authorizes the Department of Public Health to adopt rules for the implementation of federally - funded health programs.

LRB8307677JMcb

A BILL FOR

1 AN ACT to amend Section 55.27 of "The Civil 49
 2 Administrative Code of Illinois", approved March 7, 1917, as 50
 3 amended. 51

4 Be it enacted by the People of the State of Illinois, 55
 5 represented in the General Assembly:

6 Section 1. Section 55.27 of "The Civil Administrative 57
 7 Code of Illinois", approved March 7, 1917, as amended, is 58
 8 amended to read as follows:

(Ch. 127, par. 55.27) 60

9 Sec. 55.27 To accept, receive and receipt for Federal 62
 10 monies, for and in behalf of the State, given by the Federal 63
 11 government under any Federal law to the State for health 64
 12 purposes, surveys or programs, and to adopt the necessary 65
 13 rules for the implementation thereof pursuant to The Illinois
 14 Administrative Procedure Act. 68

83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL 10

SYNOPSIS: (Ch. 111 1/2, par. 4153-206)

Amends the Nursing Home Care Reform Act of 1979 to authorize the Department of Public Health to provide, by rule, for exceptions to the requirement that training courses for nurse's aides, orderlies or nurse technicians be completed within 120 days of initial employment, but requires proficiency exams taken in lieu of such training to be completed within that period.

LRB8307698ESjw

A BILL FOR

1 AN ACT to amend Section 3-206 of the "Nursing Home Care 52
2 Reform Act of 1979", approved August 23, 1979, as amended. 54

3 Be it enacted by the People of the State of Illinois, 58
4 represented in the General Assembly:

5 Section 1. Section 3-206 of the "Nursing Home Care 60
6 Reform Act of 1979", approved August 23, 1979, as amended, is 61
7 amended to read as follows:

(Ch. 111 1/2, par. 4153-206) 63

9 Sec. 3-206. The Department shall prescribe a curriculum 65
9 for training nurse's aides, orderlies and nurse technicians. 66

10 (a) No person, except a volunteer who receives no 68
11 compensation from a facility and is not included for the 69
12 purpose of meeting any staffing requirements set forth by the 70
13 Department, shall act as a nurse's aide, orderly or nurse 71
14 technician in a facility, nor shall any person, under any
15 other title, not licensed, certified, or registered to render 72
16 medical care by the Department of Registration and Education, 73
17 assist with the personal or medical care of residents in a 74
18 facility, unless such person meets the following
19 requirements:

20 (1) Be at least 16 years of age, of temperate habits and 76
21 good moral character, honest, reliable and trustworthy; 77

22 (2) Be able to speak and understand the English language 79
23 or a language understood by a substantial percentage of the 80
24 facility's residents;

25 (3) Provide evidence of employment or occupation, if 82
26 any, and residence for 2 years prior to his present 83
27 employment;

28 (4) Have completed at least 9 years of grade school or 85
29 provide proof of equivalent knowledge; 86

30 (5) Begin a current course of training for nurse's 88
31 aides, orderlies and nurse technicians, approved by the
32 Department, within 45 days of initial employment in the 91

1 capacity of a nurse's aide, orderly or nurse technician at 91
 2 any facility. Such courses of training shall be successfully 93
 3 completed within 120 days of initial employment in the
 4 capacity of a nurse's aide, orderly or nurse technician at a 94
 5 facility, subject to such reasonable exceptions as the 95
 6 Department may prescribe by rule. The Department shall adopt 96
 7 rules and regulations for such courses of training. These
 8 rules and regulations shall include procedures for facilities 98
 9 to carry on an approved course of training within the
 10 facility.

11 However, no person who on the effective date of this Act 100
 12 has been continuously employed at the same facility for one 101
 13 year or has been employed at more than one facility for 2 102
 14 years as a nurse's aide, orderly or nurse technician shall be 103
 15 required to complete such a course of training, and no 105
 16 student intern shall be required to complete a course of
 17 training.

18 In lieu of completion of an approved ~~Prior to beginning a~~ 107
 19 course of training as required by this Section any person who 110
 20 is or will be employed as a nurse's aide, orderly or nurse
 21 technician in a facility may elect to take a proficiency 111
 22 examination. Upon the successful completion of a such 112
 23 proficiency examination within 120 days of initial 113
 24 employment, prior to beginning a course of training as 114
 25 ~~required by this Section,~~ no person who is or will be
 26 employed as a nurse's aide, orderly or nurse technician shall 115
 27 be required to complete a course of training as required by 116
 28 this Section. The Department shall adopt rules and 117
 29 regulations governing the composition and administration of 118
 30 such proficiency examinations.

31 The facility shall develop and implement procedures, 120
 32 which shall be approved by the Department, for an ongoing 121
 33 review process, which shall take place within the facility, 122
 34 for nurse's aides, orderlies and nurse technicians.

35 At the time of each regularly scheduled licensure survey, 124

1 or at the time of a complaint investigation, the Department 125
2 may require any nurse's aide, orderly or nurse technician who 125
3 is required to be trained under this Section, or who has 127
4 successfully completed a proficiency examination as described 123
5 in this Section, to demonstrate, either through written 129
6 examination or action, or both, sufficient knowledge in all 130
7 areas of required training. If such knowledge is inadequate 131
8 the Department shall require the nurse's aide, orderly or 132
9 nurse technician to complete inservice training and review in 133
10 the facility until the nurse's aide, orderly or nurse 134
11 technician demonstrates to the Department, either through
12 written examination or action, or both, sufficient knowledge
13 in all areas of required training; and 135
14 (d) Be familiar with and have general skills related to 137
15 resident care.
16 (e) Persons subject to this Section shall perform their 139
17 duties under the supervision of a nurse. 140
18 (f) It is unlawful for any facility to employ any person 142
19 in the capacity of nurse's aide, orderly or nurse technician, 143
20 or under any other title, not licensed by the State of 144
21 Illinois to assist in the care of residents in such facility 145
22 unless such person has complied with this Section.
23 (g) Proof of compliance by each employee with the 147
24 requirements set out in this Section shall be maintained for 148
25 each such employee by each facility in the individual 149
26 personnel folder of the employee.
27 (h) Each facility shall certify to the Department on a 151
28 form provided by the Department the name and residence 152
29 address of each employee, and that each employee subject to 153
30 this Section meets all the requirements of this Section.
31 (i) Any facility which is operated under Section 3-303 155
32 shall be exempt from the requirements of this Section. 157

85rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL 11

SYNOPSIS: (Ch. 111 1/2, pars. 2310 and 2311)

Amends the Alcoholism Treatment Licensing Act. Provides that the rules of the Department of Public Health shall specify the types of records which an alcoholism facility or program must provide the Department with on request. Provides that licensing fees shall apply to alcoholism programs as well as alcoholism facilities.

LRB8307673ESjw

Fiscal Note Act
may be applicable

A BILL FOR

1 AN ACT to amend Sections 10 and 11 of the "Alcoholism 53
2 Treatment Licensing Act", approved August 20, 1976, as 54
3 amended. 55

4 Be it enacted by the People of the State of Illinois, 59
5 represented in the General Assembly:

6 Section 1. Sections 10 and 11 of the "Alcoholism 61
7 Treatment Licensing Act", approved August 20, 1976, as 62
8 amended, is amended to read as follows:

(Ch. 111 1/2, par. 2310) 64

9 Sec. 10. Each alcoholism treatment facility or program 66
10 shall provide the Department, on request, any data, 67
11 statistics, schedules and information which the Department 68
12 reasonably requires. The Department's rules shall specify 69
13 the types of data, statistics, schedules and information 70
14 which a facility or program must make available to comply 71
15 with this Section. The confidentiality of the patient records 73
16 shall be maintained in accordance with State and Federal
17 regulations on confidentiality of records. 75

(Ch. 111 1/2, par. 2311) 77

18 Sec. 11. After public hearing and after consultation 80
19 with the Illinois Department of Alcoholism and Substance
20 Abuse, the Department shall adopt minimum rules, regulations 81
21 and standards for alcoholism treatment facilities and 82
22 programs. These standards shall include, but not be limited
23 to:

- 24 a. physical facility standards 84
- 25 b. health standards 86
- 26 c. program standards 88
- 27 d. personnel standards 90

28 The initial license issued to an alcoholism treatment 92
29 facility or program shall bear no fee. All renewals of an 93
30 the initial license issued to the alcoholism treatment 95
31 facility shall bear a fee of not more than \$100.00 and shall

1	be based upon:	95
2	(1) the size of the facility.	97
3	(2) the complexity of the facility's program.	99
4	(3) the number of patients admitted.	101
5	(4) the cost to the Department to administer this Act.	103

83rd GENERAL ASSEMBLY State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL 12

SYNOPSIS: (Ch. 23, par. 5104)

Amends an Act regulating the solicitation of funds for charitable purposes. Gives the Attorney General discretion concerning whether to cancel an organization's registration for failure to file an annual report. Section currently makes cancellation mandatory. Provides that the Attorney General set forth, by rule, standards used to determine whether a registration shall be cancelled.

LRB8307674BDmr

*Fiscal Note Act
may be available*

A BILL FOR

1 AN ACT to amend Section 4 of "An Act to regulate 52
2 solicitation and collection of funds for charitable purposes, 53
3 providing for violations thereof, and making an appropriation 54
4 therefor", approved July 26, 1963, as amended. 55

5 Be it enacted by the People of the State of Illinois, 59
6 represented in the General Assembly:

7 Section 1. Section 4 of "An Act to regulate solicitation 61
8 and collection of funds for charitable purposes, providing 62
9 for violations thereof, and making an appropriation 63
10 therefor", approved July 26, 1963, as amended, is amended to 64
11 read as follows:

 (Ch. 23, par. 5104) 66

12 Sec. 4. (a) Every charitable organization registered 68
13 pursuant to Section 2 of this Act which shall receive in any 70
14 12 month period ending June 30th of any year contributions in 71
15 excess of \$50,000, and every charitable organization whose 72
16 fund raising functions are not carried on solely by persons 74
17 who are unpaid for such services shall file a written report 75
18 with the Attorney General upon forms prescribed by him, on or 76
19 before June 30 of each year if its books are kept on a 77
20 calendar basis, or within 6 months after the close of its 77
21 fiscal year if its books are kept on a fiscal year basis, 78
22 which shall include a financial statement covering the 79
23 immediately preceding 12 month period of operation. Such 79
24 financial statement shall include a balance sheet and 80
25 statement of income and expense, and shall be consistent with 81
26 forms furnished by the Attorney General clearly setting forth 82
27 the following: gross receipts and gross income from all 83
28 sources, broken down into total receipts and income from each 83
29 separate solicitation project or source; cost of 84
30 administration; cost of solicitation; cost of programs 85
31 designed to inform or educate the public; funds or properties 86
32 transferred out of this State, with explanation as to 86

1 recipient and purpose; total net amount disbursed or 37
2 dedicated for each major purpose, charitable or otherwise. 38
3 Such report shall also include a statement of any changes in 39
4 the information required to be contained in the registration
5 form filed on behalf of such organization. The report shall 90
6 be signed by the president or other authorized officer and 91
7 the chief fiscal officer of the organization, and shall be 92
8 accompanied by an opinion signed by an independent certified 93
9 public accountant that the financial statement therein fairly 94
10 represents the financial operations of the organization in 95
11 sufficient detail to permit public evaluation of its
12 operations.

13 (b) Every organization registered pursuant to Section 2 97
14 of this Act which shall receive in any 12 month period ending 98
15 June 30th of any year contributions not in excess of \$50,000 99
16 and all of whose fund raising functions are carried on by 100
17 persons who are unpaid for such services shall file a written 101
18 report with the Attorney General upon forms prescribed by 102
19 him, on or before June 30 of each year if its books are kept
20 on a calendar basis, or within 6 months after the close of 103
21 its fiscal year if its books are kept on a fiscal year basis, 104
22 which shall include a financial statement covering the 105
23 immediately preceding 12-month period of operation limited to
24 a statement of such organization's gross receipts from 106
25 contributions, fund raising expenses including a separate 107
26 statement of the cost of any goods, services or admissions 108
27 supplied as part of its solicitations, and the disposition of 109
28 the net proceeds from contributions. Such report shall also
29 include a statement of any changes in the information 110
30 required to be contained in the registration form filed on 111
31 behalf of such organization. The report shall be signed by 112
32 the president or other authorized officer and the chief 113
33 fiscal officer of the organization who shall certify that the
34 statements therein are true and correct to the best of their 114
35 knowledge.

1. (c) For any fiscal or calendar year of any organization 116
 2 registered pursuant to Section 2 of this Act in which such 117
 3 organization would have been exempt from registration 118
 4 pursuant to Section 3 of this Act if it had not been so 119
 5 registered, or in which it did not solicit or receive 120
 6 contributions, such organization shall file, on or before 121
 7 June 30 of each year if its books are kept on a calendar 122
 8 basis, or within 6 months after the close of its fiscal year 123
 9 if its books are kept on a fiscal year basis, instead of the 124
 10 reports required by subdivisions (a) or (b) of this Section, 125
 11 a report in the form of an affidavit of its president and 126
 12 chief fiscal officer stating the exemption and the facts upon 127
 13 which it is based or that such organization did not solicit 128
 14 or receive contributions in such fiscal year. The affidavit 129
 15 shall also include a statement of any changes in the 130
 16 information required to be contained in the registration form 131
 17 filed on behalf of such organization. 132

18 (d) The Attorney General may, in his discretion, shall 133
 19 cancel the registration of any organization which fails to 134
 20 comply with subdivision (a), (b) or (c) of this Section 135
 21 within the time therein prescribed, or fails to furnish such 136
 22 additional information as is requested by the Attorney 137
 23 General within the required time; except that the time may be 138
 24 extended by the Attorney General for a period not to exceed 3 139
 25 months. The Attorney General shall, by rule, set forth the 140
 26 standards used to determine whether a registration shall be 141
 27 cancelled as authorized by this subsection. Such standards 142
 28 shall be stated as precisely and clearly as practicable, to 143
 29 inform fully those persons affected. Notice of such 144
 30 cancellation shall be mailed to the registrant at least 15 145
 31 days before the effective date thereof. 146
 32 147

83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL 13

SYNOPSIS: (Ch. 23, par. 5112)

Amends an Act regulating the solicitation of funds for charitable purposes. Gives the Attorney General discretion concerning whether to cancel the registration of a person or organization for advertising the fact of its registration. Cancellation is now mandatory. Provides that the Attorney General shall set forth, by rule, standards used to determine whether a registration shall be cancelled.

LRB8307675BDmr

Fiscal Note Act
may be applicable

A BILL FOR

1 AN ACT to amend Section 12 of "An Act to regulate 52
 2 solicitation and collection of funds for charitable purposes, 53
 3 providing for violations thereof, and making an appropriation 54
 4 therefor", approved July 26, 1963, as amended. 55

5 Be it enacted by the People of the State of Illinois, 59
 6 represented in the General Assembly:

7 Section 1. Section 12 of "An Act to regulate 61
 8 solicitation and collection of funds for charitable purposes, 62
 9 providing for violations thereof, and making an appropriation 63
 10 therefor", approved July 26, 1963, as amended, is amended to 64
 11 read as follows:

(Ch. 23, par. 5112) 66

12 Sec. 12. Registration under this Act shall not be deemed 68
 13 to constitute an endorsement by the State of Illinois of the 69
 14 charitable organization, professional fund raiser, or 70
 15 professional solicitor so registered. It shall be unlawful 71
 16 for any charitable organization, professional fund raiser, or
 17 professional solicitor to represent, directly or indirectly, 72
 18 for the purpose of solicitation and collection of funds for 73
 19 charitable purposes, in any form or manner whatsoever by 74
 20 advertising or otherwise, that it has registered or otherwise 75
 21 complied with the provisions of this Act. The Attorney 76
 22 General may, in his discretion, shall cancel the registration 77
 23 of any organization, professional fund raiser, or 78
 24 professional solicitor which or who violates the provisions 79
 25 of this Section. The Attorney General shall, by rule, set 80
 26 forth the standards by which he shall make this
 27 determination. Such standards shall be stated as precisely 81
 28 and clearly as practicable, to inform fully those persons 82
 29 affected.

83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL 14

SYNOPSIS:

(Ch. 127 1/2, par. 154)

Amends an Act regulating the sale and use of gasoline and volatile oils. Provides that Fire Marshal's rule making authority includes authority for rules requiring tank repair contractors to file certificate of insurance and rules governing the dismantling of abandoned bulk storage plants.

LRB8307153BDMr

A BILL FOR

1 AN ACT to amend Section 2 of "An Act to regulate the 49
2 storage, transportation, sale and use of gasoline and 50
3 volatile oils", approved June 28, 1919, as amended. 52

4 Be it enacted by the People of the State of Illinois, 56
5 represented in the General Assembly:

6 Section 1. Section 2 of "An Act to regulate the storage, 53
7 transportation, sale and use of gasoline and volatile oils", 59
8 approved June 28, 1919, as amended, is amended to read as 60
9 follows:

(Ch. 127 1/2, par. 154) 62

10 Sec. 2. Except in cities or villages where regulatory 54
11 ordinances upon the subject are now or may hereafter be 65
12 adopted, the Office of the State Fire Marshal has power to 66
13 make and adopt reasonable rules and regulations governing the 67
14 keeping, storage, transportation, sale or use of gasoline and 68
15 volatile oils, including rules requiring that underground
16 storage tank repair contractors file a certificate of 69
17 insurance with the State Fire Marshal and rules governing the 70
18 dismantling of abandoned bulk storage plants. 71

83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL 15

SYNOPSIS: (Ch. 141, pars. 101 and 123)

Amends the Uniform Disposition of Unclaimed Property Act. Defines the term "active express trust". Provides that the Director of the Illinois Department of Financial Institutions shall not require the filing of routine periodic reports indicating whether property subject to the Act is being held.

LRB8307683BMmr

A BILL FOR

1 AN ACT to amend Sections 1 and 23 of the "Uniform 50
2 Disposition of Unclaimed Property Act", approved August 17, 51
3 1961, as amended. 52

4 Be it enacted by the People of the State of Illinois, 53
5 represented in the General Assembly:

6 Section 1. Sections 1 and 23 of the "Uniform 54
7 Disposition of Unclaimed Property Act", approved August 17, 55
8 1961, as amended, are amended to read as follows:

(Ch. 141, par. 101) 56

9 Sec. 1. As used in this Act, unless the context 57
10 otherwise requires:

11 (a) "Banking organization" means any bank, trust 58
12 company, savings bank, industrial bank, land bank, safe 59
13 deposit company, or a private banker engaged in business in 60
14 this State.

15 (b) "Business association" means any corporation (other 61
16 than a public corporation), joint stock company, business 62
17 trust, partnership, or any association for business purposes 63
18 of 2 or more individuals.

19 (c) "Financial organization" means any savings and loan 64
20 association, building and loan association, credit union, 65
21 currency exchange, co-operative bank or investment company, 66
22 engaged in business in this State.

23 (d) "Holder" means any person in possession of property 67
24 subject to this Act belonging to another, or who is trustee 68
25 in case of a trust, or is indebted to another on an 69
26 obligation subject to this Act.

27 (e) "Life insurance corporation" means any association 70
28 or corporation transacting within this State the business of 71
29 insurance on the lives of persons or insurance appertaining 72
30 thereto, including, but not by way of limitation, endowments 73
31 and annuities.

32 (f) "Owner" means a depositor in case of a deposit, a 74

1 beneficiary in case of a trust, a creditor, claimant, or 37
 2 payee in case of other choses in action, or any person having 38
 3 a legal or equitable interest in property subject to this 39
 4 Act, or his legal representative.

5 (g) "Person" means any individual, business association, 91
 6 government or political subdivision, public corporation, 92
 7 public authority, estate, trust, 2 or more persons having a 93
 8 joint or common interest, or any other legal or commercial 94
 9 entity.

10 (h) "Utility" means any person who owns or operates 95
 11 within this State, for public use, any plant, equipment, 97
 12 property, franchise, or license for the transmission of 98
 13 communications or the production, storage, transmission, 99
 14 sale, delivery, or furnishing of electricity, water, steam,
 15 oil or gas. 100

16 (i) "Director" means the Director of the Illinois 102
 17 Department of Financial Institutions. 103

18 (j) "Active express trust" means a trust which is 105
 19 created in express terms in a written instrument or which 106
 20 arises from the direct and positive action of the parties as 107
 21 evidenced by written instrument, words expressed or both, and 108
 22 in which the trustee is charged with active duties to carry
 23 out the purpose of the trust. 110

(Ch. 141, par. 123) 112

24 Sec. 23. The Director shall not require that any person 114
 25 file routine periodic reports indicating whether property 115
 26 subject to this Act is being held. However, if the Director 116
 27 has reason to believe that any person has failed to report 117
 28 property in accordance with this Act, he may make a demand by
 29 certified mail, return receipt requested, that such report be 118
 30 made and filed with the Director. The report of abandoned 119
 31 property or any other report required shall be made and filed 120
 32 with the Director within 60 days after receipt of the demand. 121

33 The Director may at reasonable times and upon reasonable 122
 34 notice examine the records of any person if the Director has 124

1	reason to believe that such person has failed to report	125
2	property that should have been reported pursuant to this Act.	125
3	The actual cost of any examination or investigation	128
4	incurred by the Department in administering any provision of	129
5	this Act, shall be borne by the holder examined or	130
6	investigated if:	
7	(1) A written demand for a report has been made and not	132
8	forthcoming in the time period specified in this Section, or	133
9	(2) A report has been received and additional property	135
10	reportable under the Act is discovered by such examination or	137
11	investigation. No holder shall be liable to pay more than an	138
12	amount equal to that discovered by such investigation, as a	139
13	cost of examination or investigation.	140

83rd GENERAL ASSEMBLY
State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL 16

SYNOPSIS: (Ch. 23, par. 5-5.5)

Amends the Public Aid Code to provide that skilled nursing and intermediate care facilities have the right to have a representative of the facility present during patient assessments conducted to determine the facility's payment rate.

LRB8307296EScb

A BILL FOR

1 AN ACT to amend Section 5-5.5 of "The Illinois Public Aid 53
 2 Code", approved April 11, 1967, as amended. 55

3 Be it enacted by the People of the State of Illinois. 59
 4 represented in the General Assembly:

5 Section 1. Section 5-5.5 of "The Illinois Public Aid 61
 6 Code", approved April 11, 1967, as amended, is amended to 62
 7 read as follows:

(Ch. 23, par. 5-5.5) 64

8 Sec. 5-5.5. Elements of Payment Rate. (a) The 66
 9 Department of Public Aid shall develop a prospective method 67
 10 for determining payment rates for skilled nursing and 68
 11 intermediate care services in nursing facilities composed of 69
 12 the following cost elements:

13 (1) Standard Services, with the cost of this component 71
 14 being determined by taking into account the actual costs to 72
 15 the facilities of these services.

16 (2) Patient Services, with the cost of this component 74
 17 being determined by taking into account the actual costs 75
 18 incurred by the facilities based on their rate of utilization 76
 19 of these services, as derived from an assessment of the 77
 20 patient needs in the nursing facilities. A facility shall 78
 21 have the right to have a representative of the facility 79
 22 present during patient assessments conducted to determine the
 23 facility's payment rate. The Illinois Department shall 80
 24 initiate a project, either on a pilot basis or statewide to 81
 25 reimburse the cost of patient services based on a methodology 82
 26 which utilizes an assessment of patient needs to determine 83
 27 the level of reimbursement. This methodology shall be 84
 28 different from the payment criteria for patient services 85
 29 utilized by the Illinois Department on July 1, 1981. On
 30 March 1, 1982, and each year thereafter, until such time when 86
 31 the Illinois Department adopts the methodology used in such 87
 32 project for use statewide or the Illinois Department reports 88

1	to the Legislative Advisory Committee that the methodology	39
2	did not meet the Department's goals and objectives and	90
3	therefore is ceasing such project, the Illinois Department	91
4	shall report to the General Assembly on the implementation	
5	and progress of such project. The report shall include:	92
6	(A) A statement of the Illinois Department's goals and	94
7	objectives for such project;	
8	(3) A description of such project, including the number	96
9	and type of nursing facilities involved in the project;	97
10	(C) A description of the methodology used in such	99
11	project;	
12	(D) A description of the Illinois Department's	101
13	application of the methodology;	
14	(E) A statement on the methodology's effect on the	103
15	quality of care given to patients in the sample nursing	104
16	facilities; and	
17	(F) A statement on the cost of the methodology used in	105
18	such project and a comparison of this cost with the cost of	107
19	the current payment criteria.	
20	(3) Ancillary Services, with the payment rate being	109
21	developed for each individual type of service. Payment shall	110
22	be made only when authorized under procedures developed by	111
23	the Department of Public Aid.	
24	(4) Nurse's Aide Training, with the cost of this	113
25	component being determined by taking into account the actual	114
26	cost to the facilities of such training. The rate adjustment	115
27	described in this subparagraph shall commence on March 1,	
28	1980.	
29	(b) In developing a prospective method for determining	117
30	payment rates for skilled nursing and intermediate care	118
31	services in nursing facilities, the Department of Public Aid	119
32	may consider the following cost elements:	120
33	(1) Reasonable capital cost determined by utilizing	122
34	incurred interest rate and the current value of the	123
35	investment, including land, and a depreciation factor based	124

1	on estimated depreciable straight-line life, utilizing	125
2	composite rates, or by utilizing such other reasonable cost	125
3	related methods determined by the Department.	
4	(2) Profit, with the actual amount being produced and	123
5	accruing to the providers in the form of a return on their	127
6	total investment, on the basis of their ability to	130
7	economically and efficiently deliver a type of service. The	131
8	method of payment may assure the opportunity for a profit,	132
9	but shall not guarantee or establish a specific amount as a	
10	cost.	134

83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL 17

SYNOPSIS: (Ch. 23, par. 12-13)

Amends the Public Aid Code to provide that whenever a rule of the Department of Public Aid requires that applicants or recipients verify information submitted to the Department, the rule must specify the acceptable means of verification or list examples of acceptable verification.

LRB8307297ESjs

A BILL FOR

1	AN ACT to amend Section 12-13 of "The Illinois Public Aid	49
2	Code", approved April 11, 1967, as amended.	51
3	<u>Be it enacted by the People of the State of Illinois,</u>	55
4	<u>represented in the General Assembly:</u>	
5	Section 1. Section 12-13 of "The Illinois Public Aid	57
6	Code", approved April 11, 1967, as amended, is amended to	58
7	read as follows:	
	(Ch. 23, par. 12-13)	60
8	Sec. 12-13. Rules and regulations.) The Department shall	62
9	make all rules and regulations and take such action as may be	64
10	necessary or desirable for carrying out the provisions of	65
11	this Code, to the end that its spirit and purpose may be	
12	achieved and the public aid programs administered efficiently	66
13	throughout the State. However, the rules and regulations	67
14	shall not provide that payment for services rendered to a	68
15	specific recipient by a person licensed under the "Medical	69
16	Practice Act", approved June 30, 1923, as amended, whether	70
17	under a general or limited license, or a person licensed or	
18	registered under other laws of this State to provide dental,	71
19	optometric, or pediatric care, may be authorized only when	72
20	services are recommended for that recipient by a person	73
21	licensed to practice medicine in all its branches.	74
22	<u>Whenever a rule of the Department requires that an</u>	76
23	<u>applicant or recipient verify information submitted to the</u>	77
24	<u>Department, the rule, in order to make the public fully aware</u>	78
25	<u>of what information is required for verification, shall</u>	79
26	<u>specify the acceptable means of verification or shall list</u>	
27	<u>examples of acceptable means of verification.</u>	80
28	The provisions of "The Illinois Administrative Procedure	82
29	Act", as now or hereafter amended, are hereby expressly	83
30	adopted and incorporated herein, and shall apply to all	84
31	administrative rules and procedures of the Illinois	85
32	Department under this Act, except that Section 5 of the	86

1	Illinois Administrative Procedure Act relating to procedures	87
2	for rule-making does not apply to the adoption of any rule	88
3	required by federal law in connection with which the Illinois	89
4	Department is precluded by law from exercising any	90
5	discretion, and the requirements of the Administrative	91
6	Procedure Act with respect to contested cases are not	92
7	applicable to (1) hearings involving eligibility of	93
8	applicants or recipients of public aid, (2) support hearings	
9	involving responsible relatives, or (3) personnel hearings	95
10	involving matters arising under Section 12-18.1.	96

83rd GENERAL ASSEMBLY

State of Illinois

1983 and 1984

INTRODUCED _____ . BY

BILL 18

SYNOPSIS: (Ch. 23, new par. 5-5.11a)

Amends the Public Aid Code to provide that the Department's rules governing clinic and outpatient hospital services shall include the Department's maximum reimbursement payment levels for outpatient and clinic services, the payment rate for outpatient renal dialysis, and a list of surgical procedures which must be performed in a clinic or outpatient setting to be reimbursed by the Department. Provides that where the Department's reimbursement methodology for inpatient services includes an inpatient hospital utilization maximum modified from an earlier fiscal year, the Department shall include a description of the method of modification. Provides that rules contain appeal procedure.

LRB8307476ESdv

A BILL FOR

1 AN ACT to add Section 5-5.11a to "The Illinois Public Aid 54
2 Code", approved April 11, 1967, as amended. 56

3 Be it enacted by the People of the State of Illinois. 60
4 represented in the General Assembly:

5 Section 1. Section 5-5.11a is added to "The Illinois 62
6 Public Aid Code", approved April 11, 1967, as amended. the 63
7 added Section to read as follows:

(Ch. 23, new par. 5-5.11a) 65

8 Sec. 5-5.11a. The Department's rules governing outpatient 68
9 hospital services and clinic services shall include, but not
10 be limited to, the Department's maximum reimbursement payment 69
11 levels for outpatient and clinic services, the payment rate 70
12 for outpatient renal dialysis, and a listing of surgical 71
13 procedures which must be performed in a hospital outpatient 72
14 or clinic setting to be reimbursed by the Department.

15 Where the Department's reimbursement methodology for 74
16 inpatient hospital services includes as an element use of an 75
17 inpatient hospital utilization maximum which is modified from 76
18 an earlier fiscal year utilization maximum, the Department 77
19 shall, in its rules for establishing such methodology,
20 include a complete description of the method for making such 78
21 modifications. The rules shall also provide an appeal 79
22 procedure which provides the hospital with the opportunity to 80
23 submit additional evidence and request prompt administrative
24 review of inpatient payment rates and utilization maximums. 81

25 The requirements of this Section shall not be construed 83
26 to relieve the Department of the responsibility for adopting 84
27 rules which specify the Department's payment levels, rates or 85
28 formulas where they may otherwise be required.

83rd GENERAL ASSEMBLY
State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL 19

SYNOPSIS: (Ch. 23, par. 5-5)

Amends the Public Aid Code to specify that the Department of Public Aid may classify the medical services to be provided only in accordance with the classes of persons designated in Section 5-2 as eligible for medical assistance.

LRB8307921PLks

A BILL FOR

1 AN ACT to amend Section 5-5 of "The Illinois Public Aid 50
2 Code", approved April 11, 1967, as amended. 52

3 Be it enacted by the People of the State of Illinois, 56
4 represented in the General Assembly:

5 Section 1. Section 5-5 of "The Illinois Public Aid 58
6 Code", approved April 11, 1967, as amended, is amended to 59
7 read as follows:

(Ch. 23, par. 5-5) 61

8 Sec. 5-5. Medical services.) The Illinois Department, by 63
9 rule, shall determine the quantity and quality of the medical 64
10 assistance for which payment will be authorized, and the 65
11 medical services to be provided, which may include all or 66
12 part of the following: (1) inpatient hospital services; (2) 67
13 outpatient hospital services; (3) other laboratory and x-ray 68
14 services; (4) skilled nursing home services; (5) physicians' 69
15 services whether furnished in the office, the patient's home, 70
16 a hospital, a skilled nursing home, or elsewhere; (6) medical 71
17 care, or any other type of remedial care furnished by 72
18 licensed practitioners; (7) home health care services; (8) 73
19 private duty nursing service; (9) clinic services; (10) 74
20 dental services; (11) physical therapy and related services; 75
21 (12) prescribed drugs, dentures, and prosthetic devices; and 76
22 eyeglasses prescribed by a physician skilled in the diseases 77
23 of the eye, or by an optometrist, whichever the person may 78
24 select; (13) other diagnostic, screening, preventive, and 79
25 rehabilitative services; (14) transportation and such other 80
26 expenses as may be necessary; (15) medical treatment of rape 81
27 victims, as defined in Section 1(a) of the Rape Victims 82
28 Emergency Treatment Act, for injuries sustained as a result 83
29 of the rape, including examinations and laboratory tests to 84
30 discover evidence which may be used in criminal proceedings 85
31 arising from the rape; (16) the diagnosis and treatment of 86
32 sickle cell anemia; and (17) any other medical care, and any

1 other type of remedial care recognized under the laws of this 35
2 State, but not including abortions, or induced miscarriages 36
3 or premature births, unless, in the opinion of a physician,
4 such procedures are necessary for the preservation of the 37
5 life of the woman seeking such treatment, or except an 38
6 induced premature birth intended to produce a live viable 39
7 child and such procedure is necessary for the health of the 90
8 mother or her unborn child. The Illinois Department, by 92
9 rule, shall prohibit any physician from providing medical
10 assistance to anyone eligible therefor under this Code where 93
11 such physician has been found guilty of performing an 94
12 abortion procedure in a wilful and wanton manner upon a woman 95
13 who was not pregnant at the time such abortion procedure was 96
14 performed. The preceding terms include nursing care and 98
15 nursing home service for persons who rely on treatment by 99
16 spiritual means alone through prayer for healing.

17 The Illinois Department, by rule, may distinguish and 101
18 classify the medical services to be provided only in 102
19 accordance with the classes of persons designated in Section 103
20 5-2.

21 The Illinois Department shall establish such regulations 105
22 governing the dispensing of health services under this 106
23 Article as it shall deem appropriate. In formulating these 107
24 regulations the Illinois Department shall consult with and 108
25 give substantial weight to the recommendations offered by the 109
26 Legislative Advisory Committee. The Department should seek 110
27 the advice of formal professional advisory committees
28 appointed by the Director of the Illinois Department for the 111
29 purpose of providing regular advice on policy and 112
30 administrative matters to the Illinois Department. 113

31 All dispensers of medical services shall be required to 115
32 maintain and retain business and professional records 116
33 sufficient to fully and accurately document the nature, 117
34 scope, details and receipt of the health care provided to 118
35 persons eligible for medical assistance under this Code, in 119

1 accordance with regulations promulgated by the Illinois 120
 2 Department. The rules and regulations shall require that
 3 proof of the receipt of prescription drugs, dentures, 121
 4 prosthetic devices and eyeglasses by eligible persons under 122
 5 this Section accompany each claim for reimbursement submitted 123
 6 by the dispenser of such medical services. No such claims 124
 7 for reimbursement shall be approved for payment by the 125
 8 Illinois Department without such proof of receipt, unless the
 9 Illinois Department shall have put into effect and shall be 126
 10 operating a system of post-payment audit and review which 127
 11 shall, on a sampling basis, be deemed adequate by the 128
 12 Illinois Department to assure that such drugs, dentures,
 13 prosthetic devices and eyeglasses for which payment is being 129
 14 made are actually being received by eligible recipients. 130

15 The rules and regulations of the Illinois Department 132
 16 shall require that a written statement including the required 133
 17 opinion of a physician shall accompany any claim for 134
 18 reimbursement for abortions, or induced miscarriages or 135
 19 premature births. This statement shall indicate what 136
 20 procedures were used in providing such medical services.

21 The Illinois Department shall require that all dispensers 138
 22 of medical services desiring to participate in the Medical 139
 23 Assistance program established under this Article to disclose 140
 24 all financial, beneficial, ownership, equity, surety or other 141
 25 interests in any and all firms, corporations, partnerships, 142
 26 associations, business enterprises, joint ventures, agencies, 143
 27 institutions or other legal entities providing any form of 144
 28 health care services in this State under this Article.

29 The Department shall execute, relative to the nursing 145
 30 home prescreening project, written inter-agency agreements 147
 31 with the Department of Rehabilitation Services and the 148
 32 Department on Aging, to effect the following: (i) intake 149
 33 procedures and common eligibility criteria for those persons
 34 who are receiving non-institutional services; and (ii) the 150
 35 establishment and development of non-institutional services 151

1 in areas of the State where they are not currently available 152
 2 or are undeveloped.

3 The Illinois Department shall develop and operate in 154
 4 cooperation with other State Departments and agencies and in 155
 5 compliance with applicable Federal laws and regulations, 156
 6 appropriate and effective systems of health care evaluation 157
 7 and programs for monitoring of utilization of health care 158
 8 services and facilities, as it affects persons eligible for 159
 9 medical assistance under this Code. The Illinois Department 160
 10 shall report regularly the results of the operation of such
 11 systems and programs to the Legislative Advisory Committee 161
 12 on Public Aid to enable the Committee to ensure, from time to 162
 13 time, that these programs are effective and meaningful. 163

14 The Illinois Department shall report annually to the 165
 15 General Assembly, no later than the second Friday in April of 166
 16 1979 and each year thereafter, in regard to:

17 a) actual statistics and trends in utilization of 168
 18 medical services by public aid recipients; 169
 19 b) actual statistics and trends in the provision of the 171
 20 various medical services by medical vendors; 172
 21 c) current rate structures and proposed changes in those 174
 22 rate structures for the various medical vendors; and 175
 23 d) efforts at utilization review and control by the 177
 24 Illinois Department.

25 The period covered by each report shall be the 3 years 179
 26 ending on the June 30 prior to the report. The report shall 180
 27 include suggested legislation for consideration by the 181
 28 General Assembly. The filing of one copy of the report with 182
 29 the Speaker, one copy with the Minority Leader and one copy
 30 with the Clerk of the House of Representatives, one copy with 183
 31 the President, one copy with the Minority Leader and one copy 184
 32 with the Secretary of the Senate, one copy with the 185
 33 Legislative Council, such additional copies with the State 186
 34 Government Report Distribution Center for the General 187
 35 Assembly as is required under paragraph (t) of Section 7 of

1	the State Library Act and one copy with the Legislative	138
2	Advisory Committee on Public Aid or its successor shall be	139
3	deemed sufficient to comply with this Section.	191

83rd GENERAL ASSEMBLY
State of Illinois

1983 and 1984

INTRODUCED _____, BY

BILL 20

SYNOPSIS: (Ch. 23, par. 5-5.6a)

Amends Medical Assistance Article of Public Aid Code to make provision on promulgation of payment conditions, standards and elements applicable to skilled care facilities for pediatrics and intermediate care facilities for the mentally retarded.

LRB8307920ESjw

*Fiscal Note Act
may be applicable*

A BILL FOR

1 AN ACT to amend Section 5-5.6a of "The Illinois Public 51
2 Aid Code", approved April 11, 1967, as amended. 53

3 It is enacted by the People of the State of Illinois, 57
4 represented in the General Assembly:

5 Section 1. Section 5-5.6a of "The Illinois Public Aid 59
6 Code", approved April 11, 1967, as amended, is amended to 60
7 read as follows:

(Ch. 23, par. 5-5.6a) 62

9 Sec. 5-5.6a. Promulgation of payment conditions. 64
10 standards and elements. Conditions of payment for skilled 65
11 nursing and intermediate care services in nursing facilities 66
12 under Section 5-5.3, standards of payment to such facilities 67
13 under Section 5-5.4 and the cost elements of payments to such 68
14 facilities under Section 5-5.5, promulgated and effective on 70
15 June 30, 1981, shall be null and void on July 1, 1982. The 71
16 Illinois Department shall promulgate new conditions, 72
17 standards and elements to be effective no later than July 1, 73
18 1982, for payment for the care of recipients of medical 74
19 assistance in skilled or intermediate care facilities 75
20 including, but not limited to, skilled nursing facilities for 76
21 pediatrics and intermediate care facilities for the mentally 77
22 retarded that are consistent with the criteria for nursing 78
23 facility reimbursement under Title XIX of the federal Social
24 Security Act, as determined by the federal Department of
Health and Human Services.

83rd GENERAL ASSEMBLY State of Illinois

1983 and 1984

INTRODUCED _____ BY

BILL 21

SYNOPSIS: (Ch. 23, par. 5-5.5)

Amends the Public Aid Code. Provides that if the Department of Public Aid uses a point count system to determine reimbursement rates to nursing facilities the Department's rules shall include certain standards and guidelines used in determining reimbursement rates.

LRB8307919PLks

A BILL FOR

1 AN ACT to amend Section 5-5.5 of "The Illinois Public Aid 43
2 Code", approved April 11, 1967, as amended. 50

3 Be it enacted by the People of the State of Illinois. 54
4 represented in the General Assembly:

5 Section 1. Section 5-5.5 of "The Illinois Public Aid 55
6 Code", approved April 11, 1967, as amended, is amended to 57
7 read as follows:

(Ch. 13, par. 5-5.5) 59

9 Sec. 5-5.5. Elements of Payment Rate. (a) The 61
10 Department of Public Aid shall develop a prospective method 62
11 for determining payment rates for skilled nursing and 63
12 intermediate care services in nursing facilities composed of 64
13 the following cost elements:

14 (1) Standard Services, with the cost of this component 65
15 being determined by taking into account the actual costs to 67
16 the facilities of these services.

17 (2) Patient Services, with the cost of this component 69
18 being determined by taking into account the actual costs 70
19 incurred by the facilities based on their rate of utilization 71
20 of these services, as derived from an assessment of the 72
21 patient needs in the nursing facilities. The Illinois 73
22 Department shall initiate a project, either on a pilot basis 74
23 or statewide to reimburse the cost of patient services based 75
24 on a methodology which utilizes an assessment of patient 76
25 needs to determine the level of reimbursement. This 77
26 methodology shall be different from the payment criteria for 78
27 patient services utilized by the Illinois Department on July 79
28 1, 1981. On March 1, 1982, and each year thereafter, until 80
29 such time when the Illinois Department adopts the methodology 81
30 used in such project for use statewide or the Illinois 82
31 Department reports to the Legislative Advisory Committee that 83
32 the methodology did not meet the Department's goals and 84
objectives and therefore is ceasing such project, the

1 Illinois Department shall report to the General Assembly on 94
 2 the implementation and progress of such project. The report 95
 3 shall include:

4 (A) A statement of the Illinois Department's goals and 97
 5 objectives for such project;

6 (B) A description of such project, including the number 99
 7 and type of nursing facilities involved in the project; 90
 8 (C) A description of the methodology used in such 92
 9 project;

10 (D) A description of the Illinois Department's 94
 11 application of the methodology;

12 (E) A statement on the methodology's effect on the 96
 13 quality of care given to patients in the sample nursing 97
 14 facilities; and

15 (F) A statement on the cost of the methodology used in 99
 16 such project and a comparison of this cost with the cost of 100
 17 the current payment criteria.

18 (3) Ancillary Services, with the payment rate being 102
 19 developed for each individual type of service. Payment shall 103
 20 be made only when authorized under procedures developed by 104
 21 the Department of Public Aid.

22 (4) Nurse's Aide Training, with the cost of this 106
 23 component being determined by taking into account the actual 107
 24 cost to the facilities of such training. The rate adjustment 108
 25 described in this subparagraph shall commence on March 1,
 26 1980.

27 (b) In developing a prospective method for determining 110
 28 payment rates for skilled nursing and intermediate care 111
 29 services in nursing facilities, the Department of Public Aid 112
 30 may consider the following cost elements: 113

31 (1) Reasonable capital cost determined by utilizing 115
 32 incurred interest rate and the current value of the 116
 33 investment, including land, and a depreciation factor based 117
 34 on estimated depreciable straight-line life, utilizing 118
 35 composite rates, or by utilizing such other reasonable cost 119

1 related methods determined by the Department. 119

2 (2) Profit, with the actual amount being produced and 121

3 accruing to the providers in the form of a return on their 122

4 total investment, on the basis of their ability to 123

5 economically and efficiently deliver a type of service. The 124

6 method of payment may assure the opportunity for a profit. 125

7 but shall not guarantee or establish a specific amount as a 126

8 cost. 127

9 (c) If for any type of nursing facility the Illinois 129

10 Department uses a "point count" system to determine the cost 130

11 of the patient services component of the payment rate, the 131

12 Department's rules shall include, but not be limited to: (1) 132

13 all standards, tables, formulas or other guidelines used to

14 determine whether a facility has adequate staff; (2) all 133

15 standards used for determining whether the Department will 134

16 reduce a facility's rate of payment and recover amounts 135

17 previously paid because the facility's staffing level is

18 below that indicated by its point counts; and (3) a simple, 136

19 complete, and precise statement of the Department's method of 137

20 converting a facility's point counts into reimbursement 138

21 rates. The requirements of this subsection (c) shall not be 139

22 construed to relieve the Department of the responsibility to

23 adopt rules governing other reimbursement systems where they 140

24 may otherwise be required.

APPENDIX A

THE ILLINOIS ADMINISTRATIVE PROCEDURE ACT

(Codified by West Publishing Company in Illinois Revised Statutes
at chapter 127, paragraphs 1001-1021.)

AN ACT in relation to administrative rules and procedures, and to amend an Act therein named and in connection therewith. (PA 79-1083, approved and effective September 22, 1975)

Section 1. SHORT TITLE) This Act shall be known and may be cited as "The Illinois Administrative Procedure Act." (PA 79-1083)

Section 2. APPLICABILITY) This Act applies to every agency as defined herein. Beginning January 1, 1978 in case of conflict between the provisions of this Act and the Act creating or conferring power on an agency, this Act shall control. However if an agency has existing procedures on July 1, 1977 specifically for contested cases or licensing those existing provisions control, except that this exception respecting contested cases and licensing does not apply if the Act creating or conferring power on the agency adopts by express reference the provision of this Act. Where the Act creating or conferring power on an agency establishes administrative procedures not covered by this Act, such procedures shall remain in effect.

The provisions of this Act shall not apply to (1) preliminary hearings, investigations or practices where no final determinations affecting State funding are made by the State Board of Education, (2) legal opinions issued under Section 2-3.7 of The School Code, (3) as to State colleges and universities, their disciplinary and grievance proceedings, academic irregularity and capricious grading proceedings, and admission standards and procedures, and (4) the class specifications for positions and individual position descriptions prepared and maintained pursuant to the "Personnel Code"; however such specifications shall be made reasonably available to the public for inspection and copying. Neither shall the provisions of this Act apply to hearings under Section 20 of the "Uniform Disposition of Unclaimed Property Act." (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 81-1514, effective January 1, 1981; Amended by PA 83-0891, effective November 2, 1983)

Section 3. DEFINITIONS) As used in this Act, unless the context otherwise requires, the terms specified in Section 3.01 through 3.10 have the meanings ascribed to them in those Sections. (PA 79-1083)

Section 3.01. AGENCY) "Agency" means each officer, board, commission and agency created by the Constitution, whether in the executive, legislative, or judicial branch of State government, but other

than the circuit court; each officer, department, board, commission, agency, institution, authority, university, body politic and corporate of the State; and each administrative unit or corporate outgrowth of the State government which is created by or pursuant to statute, other than units of local government and their officers, school districts and boards of election commissioners; each administrative unit or corporate outgrowth of the above and as may be created by executive order of the Governor. However, "agency" does not include:

- (a) the House of Representatives and Senate, and their respective standing and service committees;
- (b) the Governor; and
- (c) the justices and judges of the Supreme and Appellate Courts.

No entity shall be considered an "agency" for the purposes of this Act unless authorized by law to make rules or to determine contested cases. (PA 79-1083; Amended by PA 80-1457, effective January 1, 1979)

Section 3.02. CONTESTED CASE) "Contested case" means an adjudicatory proceeding, not including rate-making, rule-making, quasi-legislative, informational or similar proceedings, in which the individual legal rights, duties or privileges of a party are required by law to be determined by an agency only after an opportunity for hearing. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 3.03. HEARING EXAMINER) "Hearing examiner" means the presiding officer or officers at the initial hearing before each agency and each continuation thereof. (PA 79-1083)

Section 3.04. LICENSE) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes. (PA 79-1083)

Section 3.05. LICENSING) "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license. (PA 79-1083)

Section 3.06. PARTY) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party. (PA 79-1083)

Section 3.07. PERSON) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency. (PA 79-1083)

Section 3.08. RATE-MAKING OR RATE-MAKING ACTIVITIES) "Rate-making" or "Rate-making activities" means the establishment or review of or other exercise of control over the rates or charges for the

products or services of any person, firm or corporation operating or transacting any business in this State. (PA 79-1083)

Section 3.09. RULE) "Rule" means each agency statement of general applicability that implements, applies, interprets, or prescribes law or policy, but does not include (a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to persons or entities outside the agency, (b) informal advisory rulings issued pursuant to Section 9, (c) intra-agency memoranda or (d) the prescription of standardized forms. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 3.10. SMALL BUSINESS) For the purpose of this Act, "small business" means a concern, including its affiliates, which is independently owned and operated, not dominant in its field and which employs fewer than 50 full-time employees or which has gross annual sales of less than \$4 million. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations. (Added by PA 82-492, effective January 1, 1982)

Section 4. ADOPTION OF RULES: PUBLIC INFORMATION, AVAILABILITY OF RULES) (a) In addition to other rule-making requirements imposed by law, each agency shall:

1. adopt rules of practice setting forth the nature and requirements of all formal hearings;
2. make available for public inspection all rules adopted by the agency in the discharge of its functions.

(b) Each agency shall make available for public inspection all final orders, decisions and opinions, except those deemed confidential by state or federal statute and any trade secrets.

(c) No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

(d) Rule-making which creates or expands a State mandate on units of local government, school districts, or community college districts is subject to the State Mandates Act. The required Statement of Statewide Policy Objectives shall be published in the Illinois Register at the time that the first notice under Section 5.01 is published or when the rule is published under Section 5.02 or 5.03. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1562, effective January 16, 1981)

Section 4.01 REQUIRED RULES) (a) Each agency shall maintain as rules the following:

1. a current description of the agency's organization with necessary charts depicting same;
2. the current procedures on how the public can obtain information or make submissions or requests on subjects, programs, and activities of the agency;
3. tables of contents, indices, reference tables, and other materials to aid users in finding and using the agency's collection of rules currently in force; and
4. a current description of the agency's rule-making procedures with necessary flow charts depicting same.

(b) The rules required to be filed by this Section may be adopted, amended, or repealed and filed as provided in this Section in lieu of any other provisions or requirements of this Act.

The rules required by this Section may be adopted, amended, or repealed by filing a certified copy with the Secretary of State as provided by paragraphs (a) and (b) of Section 6, and may become effective immediately. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 4.02. RULES IMPLEMENTING DISCRETIONARY POWERS: STANDARDS) Each rule which implements a discretionary power to be exercised by an agency shall include the standards by which the agency shall exercise the power. Such standards shall be stated as precisely and clearly as practicable under the conditions, to inform fully those persons affected. (Added by PA 80-1129, effective July 1, 1980)

Section 4.03. SMALL BUSINESS FLEXIBILITY) When an agency proposes a new rule, or an amendment to an existing rule, which may have an impact on small businesses, the agency shall do each of the following: (a) The agency shall consider each of the following methods for reducing the impact of the rulemaking on small businesses. The agency shall reduce the impact by utilizing one or more of the following methods, if it finds that the methods are legal and feasible in meeting the statutory objectives which are the basis of the proposed rulemaking.

1. Establishing less stringent compliance or reporting requirements in the rule for small businesses.
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
4. Establish performance standards to replace design or operational standards in the rule for small businesses.
5. Exempt small businesses from any or all requirements of the rule.

(b) Prior to or during the notice period required under Section 5.01(a) of this Act, the agency shall provide an opportunity for small businesses to participate in the rulemaking process. The Agency shall utilize one or more of the following techniques. These techniques are in addition to other rulemaking requirements imposed by this Act or by any other Act.

1. The inclusion in any advance notice of possible rulemaking of a statement that the rule may have an impact on small businesses.
2. The publication of a notice of rulemaking in publications likely to be obtained by small businesses.
3. The direct notification of interested small businesses.
4. The conduct of public hearings concerning the impact of the rule on small businesses.
5. The use of special hearing or comment procedures to reduce the cost or complexity of participation in the rulemaking by small businesses.

(c) Prior to the notice period required under Section 5.01(a) of this Act, the agency shall notify the Small Business Office of the Department of Commerce and Community Affairs when rules affect businesses. The Small Business Office may advise or assist agencies in the preparation of initial and final regulatory flexibility analyses required under this Act. The Office may also advise or assist agencies in meeting the requirements of paragraph (b) of this Section. (Added by PA 82-492, effective January 1, 1982)

Section 5. PROCEDURE FOR RULE-MAKING) (a) Prior to the adoption, amendment or repeal of any rule, each agency shall accomplish the actions required by Sections 5.01, 5.02 or 5.03, whichever is applicable.

(b) No action by any agency to adopt, amend or repeal a rule after this Act has become applicable to the agency shall be valid unless taken in compliance with this Section. A proceeding to contest any rule on the ground of non-compliance with the procedural requirements of this Section must be commenced within 2 years from the effective date of the rule.

(c) The notice and publication requirements of this Section do not apply to a matter relating solely to agency management, personnel practices, or to public property, loans or contracts. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 5.01. GENERAL RULEMAKING) In all rulemaking to which Sections 5.02 and 5.03 do not apply, each agency shall:

(a) give at least 45 days' notice of its intended action to the general public. This first notice period shall commence on the first day the notice appears in the Illinois Register. The first notice shall include:

1. The text of the proposed rule, or the old and new materials of a proposed amendment, or the text of the provision to be repealed;
2. The specific statutory citation upon which the proposed rule, the proposed amendment to a rule or the proposed repeal of a rule is based and is authorized;
3. A complete description of the subjects and issues involved;
4. For all proposed rules and proposed amendments to rules, an initial regulatory flexibility analysis, which shall contain a description of the types of small businesses subject to the rule; a brief description of the proposed reporting, bookkeeping, and other procedures required for compliance with the rule; and a description of the types of professional skills necessary for compliance; and
5. The time, place and manner in which interested persons may present their views and comments concerning the proposed rulemaking.

During the first notice period, the agency shall provide all interested persons who submit a request to comment within the first 14 days of the notice period reasonable opportunity to submit data, views, arguments or comments, which may, in the discretion of the agency, be submitted either orally or in writing or both. The notice published in the Illinois Register shall indicate the manner selected by the agency for such submissions. The agency shall consider all submissions received.

The agency shall hold a public hearing on the proposed rulemaking, during the first notice period, in the following cases: (1) the agency finds that a public hearing would facilitate the submission of views and comments which might not otherwise be submitted; (2) the agency receives a request for a public hearing, within the first 14 days after publication of the notice of proposed rulemaking in the Illinois Register, from 25 interested persons, an association representing at least 100 interested persons, the Governor, the Joint Committee on Administrative Rules, or a unit of local government which may be affected. At the public hearing, the agency shall allow interested persons to present views and comments on the proposed rulemaking. Such a public hearing in response to a request for a hearing may not be held less than 20 days after the publication of the notice of proposed rulemaking in the Illinois Register, unless notice of the public hearing is included in the notice of proposed rulemaking. A public hearing on proposed rulemaking may not be held less than 10 days before submission of the notice required under paragraph (b) of this Section to the Joint Committee on Administrative Rules. Each agency may prescribe reasonable rules for the conduct of public hearings on proposed rulemaking to prevent undue repetition at such hearings. Such hearings must be open to the public and recorded by stenographic or mechanical means.

(b) provide up to 45 days additional notice of the proposed rulemaking to the Joint Committee on Administrative Rules. The second

notice period shall commence on the day written notice is received by the Joint Committee, and shall expire 45 days thereafter unless prior to that time the agency shall have received a statement of objection from the Joint Committee, or notification from the Joint Committee that no objection will be issued. The written notice to the Joint Committee shall include: (1) the text and location of any changes made to the proposed rulemaking during the first notice period; (2) for all proposed rules and proposed amendments to rules, a final regulatory flexibility analysis, which shall contain a summary of issues raised by small businesses during the first notice period; and a description of actions taken on any alternatives to the proposed rule suggested by small businesses during the first notice period, including reasons for rejecting any alternatives not utilized; and (3) if written request has been made by the Joint Committee within 30 days after initial notice appears in the Illinois Register pursuant to Paragraph (a) of this Section, an analysis of the economic and budgetary effects of the proposed rulemaking. After commencement of the second notice period, no substantive change may be made to a proposed rulemaking unless it is made in response to an objection or suggestion of the Joint Committee. The agency shall also send a copy of the final regulatory flexibility analysis to each of the small businesses which have presented views or comments on the proposed rulemaking during the first notice period and to any interested person who requests a copy during the first notice period. The agency may charge a reasonable fee for providing such copies to cover postage and handling costs.

(c) after the expiration of 45 days, after notification from the Joint Committee that no objection will be issued, or after response by the agency to a statement of objections issued by the Joint Committee, whichever is applicable, the agency shall file, pursuant to Section 6 of this Act, a certified copy of each rule, modification, or repeal of any rule adopted by it, which shall be published in the Illinois Register. Each rule hereafter adopted under this Section is effective upon filing, unless a later effective date is required by statute or is specified in the rule.

(d) no rule or modification or repeal of any rule may be adopted, or filed with the Secretary of State, more than one year after the date the first notice period for the rulemaking under paragraph (a) commenced. Any period during which the rulemaking is prohibited from being filed under Section 7.06a shall not be considered in calculating this one-year time period. This paragraph (d) applies to any rule or modification or repeal of any rule which has not been filed with the Secretary of State prior to the effective date of this amendatory Act of 1981. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 82-242, effective January 1, 1982; Amended by PA 82-492, effective January 1, 1982)

Section 5.02. EMERGENCY RULEMAKING) "Emergency" means the existence of any situation which any agency finds reasonably constitutes a threat to the public interest, safety or welfare. Where any agency finds that an emergency exists which requires adoption of a rule upon:

fewer days than is required by Section 5.01, and states in writing its reasons for that finding, the agency may adopt an emergency rule without prior notice or hearing, upon filing a notice of emergency rulemaking with the Secretary of State pursuant to Section 6.01 of this Act. Such notice shall include the text of the emergency rule and shall be published in the Illinois Register. Subject to applicable constitutional or statutory provisions, an emergency rule becomes effective immediately upon filing pursuant to Section 6, or at a stated date less than 10 days thereafter. The agency's finding and a statement of the specific reasons therefor shall be filed with the rule. The agency shall take reasonable and appropriate measures to make emergency rules known to the persons who may be affected by them.

An emergency rule may be effective for a period of not longer than 150 days, but the agency's authority to adopt an identical rule under Section 5.01 of this Act is not precluded. No emergency rule may be adopted more than once in any 24 month period. Two or more emergency rules having substantially the same purpose and effect shall be deemed to be a single rule for purposes of this Section. (Added by PA 81-1044, effective October 1, 1979)

Section 5.03. PEREMPTORY RULEMAKING) "Peremptory rulemaking" means any rulemaking which is required as a result of federal law, federal rules and regulations, or an order of a court, under conditions which preclude compliance with general rulemaking requirements imposed by Section 5.01 and which preclude the exercise of discretion by the agency as to the content of the rule it is required to adopt. Where any agency finds that peremptory rulemaking is necessary and states in writing its reasons for that finding, the agency may adopt peremptory rulemaking upon filing a notice of rulemaking with the Secretary of State pursuant to Section 6.01 of this Act. Such notice shall be published in the Illinois Register. A rule adopted under the peremptory rulemaking provisions of this Section becomes effective immediately upon filing with the Secretary of State and in the agency's principal office, or at a date required or authorized by the relevant federal law, rules and regulations, or court order, as stated in the notice of rulemaking. Notice of rulemaking under this Section shall be published in the Illinois Register, and shall specifically refer to the appropriate state or federal court order or federal law, rules and regulations, and shall be in such form as the Secretary of State may reasonably prescribe by rule. The agency shall file the notice of peremptory rulemaking within 30 days after a change in rules is required. (Added by PA 81-1044, effective October 1, 1979)

Section 6. FILING OF RULES) (a) Each agency shall file in the office of the Secretary of State and in the agency's principal office a certified copy of each rule and modification or repeal of any rule adopted by it. The Secretary of State and the agency shall each keep a permanent register of the rules open to public inspection.

(b) Concurrent with the filing of any rule pursuant to this Section, the filing agency shall submit to the Secretary of State for

publication in the next available issue of the Illinois Register a notice of adopted rules. Such notice shall include:

1. The text of the adopted rule, which shall include: if the material is a new rule, the full text of the new rule; or if the material is an amendment to a rule or rules, the full text of the rule or rules as amended; or if the material is a repealer, such notice of repeal.
2. The name, address and telephone number of an individual who will be available to answer questions and provide information to the public concerning the adopted rules.
3. Such other information as the Secretary of State may by rule require in the interest of informing the public. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1979; Amended by PA 81-1044, effective October 1, 1979; Amended by PA 82-298, effective January 1, 1982)

Section 6.01. FORM AND PUBLICATION OF NOTICES) The Secretary of State may prescribe reasonable rules concerning the form of documents to be filed with him, and may refuse to accept for filing such certified copies as are not in compliance with such rules. In addition, the Secretary of State shall publish and maintain the Illinois Register and may prescribe reasonable rules setting forth the manner in which agencies shall submit notices required by this Act for publication in the Illinois Register. The Illinois Register shall be published at least once each week on the same day unless such day is an official State holiday in which case the Illinois Register shall be published on the next following business day and sent to subscribers who subscribe for the publication with the Secretary of State. The Secretary of State may charge a subscription price to subscribers that covers mailing and publication costs. (Added by PA 81-1044, effective October 1, 1979; Amended by PA 82-689, effective July 1, 1982; Amended by PA 83-638, effective September 21, 1983)

Section 6.02. INCORPORATION BY REFERENCE) An agency may incorporate by reference, in its rules adopted in accordance with Section 5 of this Act, regulations or rules of an agency of the United States or of a nationally recognized organization or association without publishing the incorporated material in full. The reference in the agency rules must fully identify the incorporated matter by location and date, and must state that the rule does not include any later amendments or editions. The agency adopting the rule shall maintain a copy of the referenced regulation, rule or standard and shall make it available to the public upon request for inspection and copying at no more than cost. An agency may also at its discretion file a copy of referenced regulations, rules or standards with the State Library. An agency may incorporate by reference such matters in its rules only if the agency, organization or association originally issuing the matter makes copies readily available to the public. This section shall not apply to any agency internal manual. (Added by PA 83-638, effective September 21, 1983)

Section 7. CODIFICATION OF RULES: PUBLICATION (a) The Secretary of State shall, by rule, prescribe a uniform system for the codification of rules on or before July 1, 1980. The Secretary of State shall also, by rule, establish a schedule for compliance with the uniform codification system on or before October 1, 1980. Such schedule may be by sections of the codification system and shall require approximately one-fourth of the rules to be converted to the codification system by each October 1, starting in 1981 and ending in 1984. All rules on file with the Secretary of State and in effect on October 1, 1984, shall be in compliance with the uniform system for the codification of rules. Rules not so codified as of October 1, 1984, are void, shall be withdrawn by the Secretary of State from the permanent register of the rules, and shall not be published by the Secretary of State in either the Illinois Administrative Code or in the Illinois Register. The Secretary of State shall not adopt any codification system or schedule under this subsection without the approval of the Joint Committee on Administrative Rules. Approval by the Joint Committee shall be conditioned solely upon establishing that the proposed codification system and schedule are compatible with existing electronic data processing equipment and programs maintained by and for the General Assembly. Nothing in this Section shall prohibit an agency from adopting rules in compliance with the codification system earlier than specified in the schedule.

(b) If no substantive changes are made by the agency in amending existing rules to comply with the codification system, such codified rules may be adopted until October 1, 1984, without requiring notice or publication of the text of rules pursuant to Section 5. In such a case, the publication requirement shall be satisfied by the publication in the Illinois Register of a notice stating that the agency has adopted the rules to comply with the codification system, that no substantive changes have been made in the rules and that the State Library has reviewed and approved the codification of the rules. The notice shall include the current names and numbers of the rules being codified, an outline of the headings of the sections of the rules as codified and may also include a table indicating the relationship between any rule numbers previously used by the agency and the numbering system of the codified rules. The agency shall provide the text of such rules as codified to the State Library for review and necessary changes and recommendations at least 30 days prior to the publication of such notice. Whenever the codification of an emergency or peremptory rule is changed subsequent to its publication as adopted in the Illinois Register, a notice of such change, in the manner set forth in this subsection, shall be published in the next available issue of the Illinois Register. Such a change in the rule's codification shall not affect its validity or the date upon which it became effective.

(c) Each rule proposed in compliance with the codification system shall be reviewed by the State Library under the Secretary of State prior to the expiration of the public notice period provided by Section 5.01 (a) of this Act or prior to the publication of the notice required under subsection (b) of this section. The State Library shall cooperate

with agencies in its review to insure that the purposes of the codification system are accomplished. The State Library shall have the authority to make changes in the numbering and location of the rule in the codification scheme, providing such changes do not affect the meaning of the rules. The State Library may recommend changes in the sectioning and headings proposed by the agency and suggest grammatical and technical changes to correct errors. The State Library may add notes concerning the statutory authority, dates proposed and adopted and other similar notes to the text of the rules, if such notes are not supplied by the agency. This review by the State Library shall be for the purpose of insuring the uniformity of and compliance with the codification system. The State Library shall prepare indexes by agency, subject matter, and statutory authority and any other necessary indexes, tables and other aids for locating rules to assist the public in the use of the Code.

(d) The State Library shall make available to the agency and the Joint Committee on Administrative Rules copies of the changes in the numbering and location of the rule in the codification scheme, the recommended changes in the sectioning and headings, and the suggestions made concerning the correction of grammatical and technical errors or other suggested changes. The agency shall in the notice required by Section 5.01(b) of this Act, or if such notice is not required, at least 10 days prior to the publication of the notice required under subsection (b) of this Section, provide to the Joint Committee a response to the recommendations of the State Library including any reasons for not adopting the recommendations.

(e) In the case of reorganization of agencies, transfer of functions between agencies, or abolishment of agencies by executive order or law, which affects rules on file with the Secretary of State, the State Library shall notify the Governor, the Attorney General, and the agencies involved of the effects upon such rules on file. If the Governor or the agencies involved do not respond to the State Library's notice within 45 days by instructing the State Library to delete or transfer the rules, the State Library may delete or place such rules under the appropriate agency for the purpose of insuring the consistency of the codification scheme and shall notify the Governor, the Attorney General and the agencies involved.

(f) The Secretary of State shall publish an Illinois Administrative Code as effective January 1, 1985. The code shall be published on or before June 1, 1985, and the Secretary of State shall update each section of the Code at least annually thereafter. Such Code shall contain the complete text of all rules of all State agencies filed with his office and effective on October 1, 1984, or later and the indexes, tables, and other aids for locating rules prepared by the State Library. The Secretary of State shall design the Illinois Register to supplement such Code. The Secretary of State shall make copies of the Code available generally at a price covering publication and mailing costs.

(g) The publication of a rule in the Code or in the Illinois Register as an adopted rule shall establish a rebuttable presumption that the rule was duly filed and that the text of the rule as published in the Code is the text of the rule adopted. Publication of the text of a rule in any other location whether by the agency or some other person shall not be taken as establishing such presumption. Judicial notice shall be taken of the text of each rule published in the Code or Register.

(h) The codification system, the indexes, tables, and other aids for locating rules prepared by the State Library, notes and other materials developed under this Section in connection with Administrative Code shall be the property of the State. No person may attempt to copyright or publish for sale such materials except the Secretary of State as provided in this Section. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 81-1348, effective July 16, 1980; Amended by PA 83-555, effective January 1, 1984; Amended by PA 83-556, effective January 1, 1984)

Section 7.01. CERTIFICATION OF RULES FILED WITH THE SECRETARY OF STATE) (a) Beginning January 1, 1978, whenever a rule, or modification or repeal of any rule, is filed with the Secretary of State, the Secretary of State within three working days after such filing shall send a certified copy of such rule, modification or repeal to the Joint Committee on Administrative Rules established in Section 7.02.

(b) Any rule on file with the Secretary of State on January 1, 1978 shall be void 60 days after the date unless within such 60 day period the issuing agency certifies to the Secretary of State that the rule is currently in effect.

Within 45 days after the receipt of any certification pursuant to this sub-section (b), the Secretary of State shall send the Joint Committee on Administrative Rules established in Section 7.02 a copy of each agency's certification so received along with a copy of the rules covered by the certification. (Added by PA 80-1035, effective September 27, 1977)

Section 7.02. JOINT COMMITTEE ON ADMINISTRATIVE RULES; MEMBERSHIP, TERMS, VACANCIES, COMPENSATION, MEETINGS, EXECUTIVE DIRECTOR, OFFICE) (a) The Joint Committee on Administrative Rules is hereby created. The Joint Committee shall be composed of 16 members, 4 members appointed by the President of the Senate and 4 by the Senate Minority Leader, and 4 members appointed by the Speaker of the House of Representatives and 4 by the House Minority Leader.

Members of the Joint Committee shall be appointed during the month of July of each odd numbered year for 2 year terms beginning August 1, and until their successors are appointed and qualified. In the event of a death of a member or if a member ceases to be a member

of the General Assembly a vacancy shall exist. Vacancies shall be filled for the time remaining of the term in the same manner as the original appointments. All appointments shall be in writing and filed with the Secretary of State as a public record.

(b) The Joint Committee shall organize during the month of September each odd numbered year by electing a Chairman and such other officers as it deems necessary. The Chairmanship of the Joint Committee shall be for a 2 year term and may not be filled in 2 successive terms by persons of the same political party. Members of the Joint Committee shall serve without compensation, but shall be reimbursed for expenses. The Joint Committee shall hold monthly meetings and may meet oftener upon the call of the Chairman or 4 members. A quorum of the Joint Committee consists of a majority of the members.

(c) When feasible the agenda of each meeting of the Joint Committee shall be submitted to the Secretary of State to be published at least 5 days prior to the meeting in the Illinois Register. The Joint Committee may also weekly, or as often as necessary, submit for publication in the Illinois Register lists of the dates on which notices under Section 5.01 of this Act were received and the dates on which the proposed rulemakings will be considered. The provisions of this subsection shall not prohibit the Joint Committee from acting upon an item that was not contained in the published agenda.

(d) The Joint Committee shall appoint an Executive Director who shall be the staff director. The Executive Director shall receive a salary to be fixed by the Joint Committee.

The Executive Director shall be authorized to employ and fix the compensation of such necessary professional, technical and secretarial staff and prescribe the duties of such staff.

(e) A permanent office of the Joint Committee shall be in the State Capitol Complex wherein the Space Needs Commission shall provide suitable offices.

(f) The Joint Committee may charge reasonable fees for copies of documents or publications to cover the cost of copying or printing. However, the Joint Committee shall provide copies of documents or publications without cost to agencies which are directly affected by recommendations or findings included in such documents or publications. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 80-1457, effective January 1, 1979; Amended by PA 82-372, effective September 2, 1981; Amended by PA 83-638, effective September 21, 1983)

Section 7.03. ADMINISTRATION OF OATHS OR AFFIRMATIONS: AFFIDAVITS OR DEPOSITIONS: SUBPOENA) (a) The Executive Director of the Joint Committee or any person designated by him may

administer oaths or affirmations, take affidavits or depositions of any person.

(b) The Executive Director, upon approval of majority vote of the Joint Committee, or the presiding officers may subpoena and compel the attendance before the Joint Committee and examine under oath any person, or the production for the Joint Committee of any records, books, papers, contracts or other documents.

If any person fails to obey a subpoena issued under this Section, the Joint Committee may apply to any circuit court to secure compliance with the subpoena. The failure to comply with the order of the court issued in response thereto shall be punished as a contempt. (Added by PA 80-1035, effective September 27, 1977)

Section 7.04. POWERS OF JOINT COMMITTEE) The Joint Committee shall have the following powers under this Act:

1. The function of the Joint Committee shall be the promotion of adequate and proper rules by agencies and an understanding on the part of the public respecting such rules. Such function shall be advisory only, except as provided in Sections 7.06a and 7.07a.

2. The Joint Committee may undertake studies and investigations concerning rule-making and agency rules.

3. The Joint Committee shall monitor and investigate compliance of agencies with the provisions of this Act, make periodic investigations of the rule-making activities of all agencies, and evaluate and report on all rules in terms of their propriety, legal adequacy, relation to statutory authorization, economic and budgetary effects and public policy.

4. Hearings and investigations conducted by the Joint Committee under this Act may be held at such times and places within the State as such Committee deems necessary.

5. The Joint Committee shall have the authority to request from any agency an analysis of the:

a. effect of a new rule, amendment or repealer, including any direct economic effect on the persons regulated by the rule; any anticipated effect on the proposing agency's budget and the budgets of other State agencies; and any anticipated effects on State revenues;

b. agency's evaluation of the submissions presented to the agency pursuant to Section 5.01 of this Act;

c. a description of any modifications from the initially published proposal made in the finally accepted version of the intended rule, amendment or repealer.

6. Failure of the Joint Committee to object to any proposed rule, amendment, or repealer or any existing rule shall not be construed as implying direct or indirect approval of the rule or proposed rule, amendment, or repealer by the Joint Committee or the General Assembly. (Added by PA 80-1035, effective September 27, 1977;

Amended by PA 80-1044, effective October 1, 1978; Amended by PA 81-1035, effective January 1, 1980; Amended by PA 81-1514, effective January 1, 1981)

Section 7.05. RESPONSIBILITIES OF JOINT COMMITTEE) The Joint Committee shall have the following responsibilities under this Act:

1. The Joint Committee shall conduct a systematic and continuing study of the rules and rule-making process of all state agencies, including those agencies not covered in Section 3.01 of this Act, for the purpose of improving the rule-making process, reducing the number and bulk of rules, removing redundancies and unnecessary repetitions and correcting grammatical, typographical and like errors not affecting the construction or meaning of the rules, and it shall make recommendations to the appropriate affected agency.

2. The Joint Committee shall review the statutory authority on which any administrative rule is based.

3. The Joint Committee shall maintain a review program, to study the impact of legislative changes, court rulings and administrative action on agency rules and rule-making.

4. The Joint Committee shall suggest rulemaking of an agency whenever the Joint Committee, in the course of its review of the agency's rules under this Act, determines that the agency's rules are incomplete, inconsistent or otherwise deficient. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 7.06. EXAMINATION OF PROPOSED RULE, AMENDMENT OR REPEAL OF RULE BY THE JOINT COMMITTEE: DETERMINATIONS) (a) The Joint Committee may examine any proposed rule, amendment to a rule, and repeal of a rule for the purpose of determining whether the proposed rule, amendment to a rule, or repeal of a rule is within the statutory authority upon which it is based, whether the rule, amendment to a rule or repeal of a rule is in proper form and whether the notice was given prior to its adoption, amendment, or repeal and was sufficient to give adequate notice of the purpose and effect of the rule, amendment or repeal.

(b) If the Joint Committee objects to a proposed rule, amendment to a rule, or repeal of a rule, it shall certify the fact to the issuing agency and include with the certification a statement of its specific objections.

(c) If within 45 days after notice of proposed rulemaking has been received by the Joint Committee, the Joint Committee certifies its objections to the issuing agency then that agency shall within 90 days of receipt of the statement of objection:

1. modify the proposed rule, amendment or repealer to meet the Joint Committee's objections;
2. withdraw the proposed rule, amendment, or repealer in its entirety, or;

3. refuse to modify or withdraw the proposed rule, amendment or repealer.

(d) If an agency elects to modify a proposed rule, amendment or repealer to meet the Joint Committee's objections, it shall make such modifications as are necessary to meet the objections and shall resubmit the rule, amendment or repealer to the Joint Committee. In addition, the agency shall submit a notice of its election to modify the proposed rule, amendment or repealer to meet the Joint Committee's objections to the Secretary of State, which notice shall be published in the first available issue of the Illinois Register, but the agency shall not be required to conduct a public hearing. If the Joint Committee determines that the modifications do not remedy the Joint Committee's objections, it shall so notify the agency in writing and shall submit a copy of such notification to the Secretary of State for publication in the next available issue of the Illinois Register. In addition, the Joint Committee may recommend legislative action as provided in subsection (g) for agency refusals.

(e) If an agency elects to withdraw a proposed rule, amendment or repealer as a result of the Joint Committee's objections, it shall notify the Joint Committee, in writing, of its election and shall submit a notice of the withdrawal to the Secretary of State which shall be published in the next available issue of the Illinois Register.

(f) Failure of an agency to respond to the Joint Committee's objections to a proposed rule, amendment or repealer, within the time prescribed in subsection (c) shall constitute withdrawal of the proposed rule, amendment or repealer in its entirety. The Joint Committee shall submit a notice to that effect to the Secretary of State which shall be published in the next available issue of the Illinois Register and the Secretary of State shall refuse to accept for filing a certified copy of such proposed rule, amendment or repealer under the provisions of Section 6.

(g) If an agency refuses to modify or withdraw the proposed rule, amendment or repealer so as to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State which shall be published in the next available issue of the Illinois Register. If the Joint Committee decides to recommend legislative action in response to an agency refusal, then the Joint Committee shall have drafted and have introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee.

(h) No rule, amendment or repeal of a rule shall be accepted by the Secretary of State for filing under Section 6, if such rule-making is subject to this Section, until after the agency has responded to the objections of the Joint Committee as provided in this Section. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 7.06a. JOINT COMMITTEE STATEMENT ON PROPOSED RULE, AMENDMENT OR REPEALER OBJECTIONABLE UNDER COMMITTEE'S REVIEW STANDARDS) (a) If the Joint Committee determines that adoption and effectiveness of a proposed rule, amendment or repealer or portion of a proposed rule, amendment or repealer by an agency would be objectionable under any of the standards for the Joint Committee's review specified in Sections 7.04, 7.05, 7.06, 7.07 or 7.08 of this Act and would constitute a serious threat to the public interest, safety or welfare, the Joint Committee may at any time prior to the taking effect of such proposed rule, amendment or repealer issue a statement to that effect. Such statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of such statement shall be transmitted to the proposing agency and to the Secretary of State for publication in the next available issue of the Illinois Register.

(b) The proposed rule, amendment or repealer or the portion of the proposed rule, amendment or repealer to which the Joint Committee has issued a statement under subsection (a) shall not be accepted for filing by the Secretary of State. The agency may not enforce or invoke for any reason a proposed rule, amendment or repealer or any portion thereof which is prohibited from being filed by this subsection during this 180 day period.

(c) The Joint Committee shall, as soon as practicable after the issuance of a statement under subsection (a), introduce in either house of the General Assembly a Joint resolution stating that the General Assembly desires to continue the prohibition of the proposed rule, amendment or repealer or the portion thereof to which the statement was issued from being filed and taking effect. The joint resolution shall immediately following its first reading be placed on the calendar for consideration in each house of the General Assembly without reference to a standing committee. If such a joint resolution is passed by both houses of the General Assembly within the 180 day period provided in subsection (b), the agency shall be prohibited from filing the proposed rule, amendment or repealer or the portion thereof and the proposed rule, amendment or repealer or the portion thereof shall not take effect. The Secretary of State shall not accept for filing the proposed rule, amendment or repealer or the portion thereof which the General Assembly has prohibited the agency from filing as provided in this subsection. If the 180 day period provided in subsection (b) expires prior to passage of the joint resolution, the agency may file the proposed rule, amendment or repealer or the portion thereof as adopted and it shall take effect. (Added by PA 81-1514, effective January 1, 1981; Amended by PA 82-372, effective September 2, 1981)

Section 7.07. EXAMINATION OF RULE BY JOINT COMMITTEE: DETERMINATION) (a) The Joint Committee may examine any rule for the purpose of determining whether the rule is within the statutory authority upon which it is based, and whether the rule is in proper form.

(b) If the Joint Committee objects to a rule, it shall, within 5 days of the objection, certify the fact to the adopting agency and include within the certification a statement of its specific objections.

(c) Within 90 days of receipt of the certification, the agency shall:

1. Notify the Joint Committee that it has elected to amend the rule to meet the Joint Committee's objection;
2. Notify the Joint Committee that it has elected to repeal the rule, or;
3. Notify the Joint Committee that it refuses to amend or repeal the rule.

(d) If the agency elects to amend a rule to meet the Joint Committee's objections, it shall notify the Joint Committee in writing and shall initiate rule-making procedures for that purpose by giving notice as required by Section 5 of this Act. The Joint Committee shall give priority to rules so amended when setting its agenda.

(e) If the agency elects to repeal a rule as a result of the Joint Committee objections, it shall notify the Joint Committee, in writing, of its election and shall initiate rule-making procedures for that purpose by giving notice as required by Section 5 of this Act.

(f) If the agency elects to amend or repeal a rule as a result of the Joint Committee objections, it shall complete the process within 180 days after giving notice in the Illinois Register.

(g) Failure of the agency to respond to the Joint Committee's objections to a rule within the time prescribed in subsection (c) shall constitute a refusal to amend or repeal the rule.

(h) If an agency refuses to amend or repeal a rule so as to remedy an objection stated by the Joint Committee, it shall notify the Joint Committee in writing of its refusal and shall submit a notice of refusal to the Secretary of State which shall be published in the next available issue of the Illinois Register. If the Joint Committee, in response to an agency refusal, decides to recommend legislative action, then the Joint Committee shall have drafted and have introduced into either house of the General Assembly appropriate legislation to implement the recommendations of the Joint Committee. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1044, effective October 1, 1979)

Section 7.07a. JOINT COMMITTEE STATEMENT ON RULE ADOPTED UNDER SECTIONS 5.02 OR 5.03 AND DEEMED OBJECTIONABLE UNDER COMMITTEE'S REVIEW STANDARDS) (a) If the Joint Committee determines that a rule or portion of a rule adopted under Sections 5.02 or 5.03 of this Act is objectionable under any of the standards for the Joint Committee's review specified in Sections 7.04, 7.05, 7.06, 7.07, or 7.08 of this Act and constitutes a serious threat to the public interest,

safety or welfare, the Joint Committee may issue a statement to that effect. Such statement may be issued by the Joint Committee only upon the affirmative vote of three-fifths of the members appointed to the Joint Committee. A certified copy of such statement shall be transmitted to the affected agency and to the Secretary of State for publication in the next available issue of the Illinois Register.

(b) The effectiveness of the rule or the portion of a rule shall be suspended immediately for at least 180 days upon receipt of the certified statement by the Secretary of State. The Secretary of State shall indicate such suspension prominently and clearly on the face of the affected rule or the portion of a rule filed in the Office of the Secretary of State. Rules or portions of rules suspended in accordance with this subsection shall become effective again upon the expiration of 180 days from receipt of the statement by the Secretary of State if the General Assembly does not continue the suspension as provided in subsection (c). The agency may not enforce, nor invoke for any reason, a rule or portion of a rule which has been suspended in accordance with this subsection. During the 180 days, the agency may not file, nor may the Secretary of State accept for filing, any rule having substantially the same purpose and effect as rules or portions of rules suspended in accordance with this subsection.

(c) The Joint Committee shall, as soon as practicable after issuance of a statement under subsection (a), cause to be introduced in either house of the General Assembly a joint resolution stating that the General Assembly desires to continue the suspension of effectiveness of a rule or the portion of the rule to which the statement was issued. The joint resolution shall immediately following its first reading be placed on the calendar for consideration in each house of the General Assembly without reference to a standing committee. If such a joint resolution is passed by both houses of the General Assembly within the 180 day period provided in subsection (b), the rule or the portion of the rule shall be considered repealed and the Secretary of State shall immediately remove such rule or portion of a rule from the collection of effective rules. (Added by PA 81-1514, effective January 1, 1981; Amended by PA 82-372, effective September 2, 1981)

Section 7.08. PERIODIC EVALUATION OF RULES BY JOINT COMMITTEE: CATEGORIES) (a) The Joint Committee shall evaluate the rules of each agency at least once every 5 years. The Joint Committee shall develop a schedule for this periodic evaluation. In developing this schedule, the Joint Committee shall group rules by specified areas to assure the evaluation of similar rules at the same time. Such schedule shall include at least the following categories:

1. human resources;
2. law enforcement;
3. energy;
4. environment;
5. natural resources;
6. transportation;

7. public utilities;
8. consumer protection;
9. licensing laws;
10. regulation of occupations;
11. labor laws;
12. business regulation;
13. financial institutions; and
14. government purchasing.

(b) Whenever evaluating any rules as required by this Section, the Joint Committee's review shall include an examination of:

1. organizational, structural and procedural reforms which effect rules or rulemaking;
2. merger, modification, establishment or abolition of regulations;
3. eliminating or phasing out outdated, overlapping or conflicting regulatory jurisdictions or requirements of general applicability; and
4. economic and budgetary effects. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 81-1035, effective January 1, 1980)

Section 7.09. ADMINISTRATION OF ACT) The Joint Committee shall have the authority to adopt rules to administer the provisions of this Act relating to the Joint Committee's responsibilities, powers and duties. (Added by PA 80-1035, effective September 27, 1977)

Section 7.10. REPORT OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS BY THE JOINT COMMITTEE) The Joint Committee shall report its findings, conclusions and recommendations including suggested legislation to the General Assembly by February 1, of each year.

The requirement for reporting to the General Assembly shall be satisfied by filing copies of the report with the Speaker, the Minority Leader and the Clerk of the House of Representatives and the President, the Minority Leader and the Secretary of the Senate and the Legislative Council, as required by Section 3.1 of "An Act to revise the law in relation to the General Assembly", approved February 25, 1874, as amended, and filing such additional copies with the State Government Report Distribution Center for the General Assembly as is required under paragraph (t) of Section 7 of the State Library Act. (Added by PA 80-1035, effective September 27, 1977; Amended by PA 83-784, effective January 1, 1984)

Section 8. PETITION FOR ADOPTION OF RULES) (a) An agency shall in accordance with Section 5, adopt rules which implement recently enacted legislation of the General Assembly in a timely and expeditious manner.

(b) Any interested person may petition an agency requesting the promulgation, amendment or repeal of a rule. Each agency shall

prescribe by rule the form for petitions and the procedure for their submission, consideration and disposition. If, within 30 days after submission of a petition, the agency has not initiated rule-making proceedings in accordance with Section 5 of this Act, the petition shall be deemed to have been denied. (PA 79-1083; Amended by PA 83-529, effective January 1, 1984)

Section 9. DECLARATORY RULINGS BY AGENCIES) Each agency may in its discretion provide by rule for the filing and prompt disposition of petitions or requests for declaratory rulings as to the applicability to the person presenting the petition or request of any statutory provision enforced by the agency or of any rule of the agency. Declaratory rulings shall not be appealable. The agency shall maintain as a public record in the agency's principal office and make available for public inspection and copying any such rulings. The agency shall delete trade secrets or other confidential information from the ruling prior to making it available. (PA 79-1083; Amended by PA 82-727, effective November 12, 1981)

Section 10. CONTESTED CASES: NOTICE: HEARING) (a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice. Such notice shall be served personally or by certified or registered mail upon such parties or their agents appointed to receive service of process and shall include:

1. a statement of the time, place and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is to be held;
3. a reference to the particular Sections of the statutes and rules involved; and
4. except where a more detailed statement is otherwise provided for by law, a short and plain statement of the matters asserted.

(b) Opportunity shall be afforded all parties to be represented by legal counsel, and to respond and present evidence and argument.

(c) Unless precluded by law, disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. (PA 79-1083)

Section 11. RECORD IN CONTESTED CASES) (a) The record in a contested case shall include:

1. all pleadings (including all notices and responses thereto), motions, and rulings;
2. evidence received;
3. a statement of matters officially noticed;
4. offers of proof, objections and rulings thereon;
5. proposed findings and exceptions;
6. any decision, opinion or report by the hearing examiner;

7. all staff memoranda or data submitted to the hearing examiner or members of the agency in connection with their consideration of the case; and

8. any communication prohibited by Section 14 of this Act, but such communications shall not form the basis for any finding of fact.

(b) Oral proceedings or any part thereof shall be recorded stenographically or by such other means as to adequately insure the preservation of such testimony or oral proceedings and shall be transcribed on request of any party.

(c) Findings of fact shall be based exclusively on the evidence and on matters officially noticed. (PA 79-1083)

Section 12. RULES OF EVIDENCE: OFFICIAL NOTICE) In contested cases: (a) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence and privilege as applied in civil cases in the Circuit Courts of this State shall be followed. However, evidence not admissible under such rules of evidence may be admitted (except where precluded by statute) if it is a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced, any part of the evidence may be received in written form.

(b) Subject to the evidentiary requirements of subsection (a) of this Section, a party may conduct cross-examination required for a full and fair disclosure of the facts.

(c) Notice may be taken of matters of which the Circuit Courts of this State may take judicial notice. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence. (PA 79-1083)

Section 13. PROPOSAL FOR DECISION) Except where otherwise expressly provided by law, when in a contested case a majority of the officials of the agency who are to render the final decision has not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and to present a brief and, if the agency so permits, oral argument, to the agency officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by

the persons who conducted the hearing or one who has read the record. (PA 79-1083)

Section 14. DECISIONS AND ORDERS) A final decision or order adverse to a party (other than the agency) in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties or their agents appointed to receive service of process shall be notified either personally or by registered or certified mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

A decision by any agency in a contested case under this Act shall be void unless the proceedings are conducted in compliance with the provisions of this Act relating to contested cases except to the extent such provisions are waived pursuant to Section 18 of this Act and except to the extent the agency has adopted its own rules for contested cases as authorized in Section 2 of this Act. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 14.1 EXPENSES: ATTORNEY FEES) (a) In any contested case initiated by any agency which does not proceed to court for judicial review and on any issue where a court does not have jurisdiction to make an award of litigation expenses under Section 41 of the Civil Practice Act, any allegation made by the agency without reasonable cause and found to be untrue shall subject the agency making such allegation to the payment of the reasonable expenses, including reasonable attorney's fees, actually incurred in defending against that allegation by the party against whom the case was initiated.

The claimant shall make his demand for such expenses to the agency. If the claimant is dissatisfied because of the agency's failure to make any award or because of the insufficiency of the agency's award, the claimant may petition the Court of Claims for the amount deemed owed. If allowed any recovery by the Court of Claims, the claimant shall also be entitled to reasonable attorney's fees and the reasonable expenses incurred in making his claim for the expenses incurred in the administrative action.

(b) In any case in which a party has any administrative rule invalidated by a court for any reason, including but not limited to the agency's exceeding its statutory authority in the adoption of the rule, the court shall award the party bringing the action the reasonable expenses of the litigation, including reasonable attorney's fees. (Added by PA 82-670, effective January 1, 1982)

Section 15. EX PARTE CONSULTATIONS) Except in the disposition of matters which they are authorized by law to entertain or dispose of on an ex parte basis, neither agency members, employees nor hearing examiners shall, after notice of hearing in a contested case or licensing to which the procedures of a contested case apply under this Act, communicate, directly or indirectly, in connection with any issue of fact, with any person or party, or in connection with any other issue with any party or his representative, except upon notice and opportunity for all parties to participate. However, an agency member may communicate with other members of the agency, and an agency member or hearing examiner may have the aid and advice of one or more personal assistants. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 16. LICENSES) (a) When any licensing is required by law to be preceded by notice and opportunity for hearing, the provisions of this Act concerning contested cases shall apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license shall continue in full force and effect until the final agency decision on the application has been made unless a later date is fixed by order of a reviewing court.

(c) No agency shall revoke, suspend, annul, withdraw, amend materially, or refuse to renew any valid license without first giving written notice to the licensee of the facts or conduct upon which the agency will rely to support its proposed action, and an opportunity for hearing in accordance with the provisions of this Act concerning contested cases. At any such hearing, the licensee shall have the right to show compliance with all lawful requirements for the retention, or continuation or renewal of the license. If, however, the agency finds that the public interest, safety or welfare imperatively requires emergency action, and if the agency incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action which proceedings shall be promptly instituted and determined.

Any application for renewal of a license which contains required and relevant information, data, material or circumstances which were not contained in an application for the existing license, shall be subject to the provisions of Section 16(a) of this Act. (PA 79-1083; Amended by PA 80-1035, effective September 27, 1977)

Section 17. RATE-MAKING) Every agency which is empowered by law to engage in rate-making activities shall establish by rule, not inconsistent with the provisions of law establishing such rate-making jurisdiction, the practice and procedure to be followed in rate-making activities before such agency. (PA 79-1083)

Section 18. WAIVER) Compliance with any or all of the provisions of this Act concerning contested cases may be waived by written stipulation of all parties. (PA 79-1083)

Section 19. (PA 79-1083; Repealed as of January 1, 1978, by PA 80-1035, effective September 27, 1977)

Section 20. SEVERABILITY) If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and for this purpose the provisions of this Act are severable. (PA 79-1083)

Section 21. EFFECTIVE DATE) This Act takes effect upon its becoming a law. (PA 79-1083, effective September 22, 1975)



TITLE 1: GENERAL PROVISIONS
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 210
GENERAL POLICIES

Section	
210.100	Definitions
210.200	Committee Function
210.300	Consultation with Agencies
210.400	Cooperation with the Rules Division
210.450	Publication of Notice and Hearing Dates
210.500	Use of Subpoenas

AUTHORITY: Implementing Sections 5.01 and 7.02 - 7.10 and authorized by Section 7.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, pars. 1005.01, 1007.02 — 1007.10 and 1007.09).

SOURCE: Adopted at 3 Ill. Reg. 8, p. 18, effective April 1, 1979; amended at 3 Ill. Reg. 49, p. 230, effective December 10, 1979; rules repealed, new rules adopted and codified at 4 Ill. Reg. 49, p. 166, effective December 1, 1980; amended at 6 Ill. Reg. 9314, effective August 1, 1982.

Section 210.100 Definitions

As used in these rules (Parts 210 through 260):

“*Act*” means the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1001 et. seq., as amended).

“*Committee*” means the Joint Committee on Administrative Rules, created by Section 7.02(a) of the Act.

“*Director*” means the Executive Director of the Committee.

“*Register*” means the Illinois Register which is published weekly by the Secretary of State. It contains notices and the text of all proposed and adopted rules.

“*Rules Division*” means the unit in the office of the Secretary of State which files rules and publishes the Register.

Section 210.200 Committee Function

The committee will fulfill its function of *promoting adequate and proper rules by agencies and understanding on the part of the public respecting such rules* and its responsibility to review rules and rulemaking. It will seek to cooperate with agencies as much as possible. It will conduct its hearings to promote full and open discussion of rules and rulemaking. This policy is meant to implement the spirit as well as the letter of the Act.

Section 210.300 Consultation with Agencies

Some agencies may have some problems implementing or complying with the rulemaking procedures of the Act. The Committee and its staff will discuss these types of problems with agencies. Such

consultation will be used to advise agencies about form, statutory authority, or other matters which are considered by the Committee in its review of rules and rulemaking.

Section 210.400 Cooperation with the Rules Division

The Rules Division has the functions under the Act of filing rules and of publishing the Register. The Committee will cooperate fully with the Rules Division. The Committee will strive to establish a good working relationship with the Rules Division to insure a smooth and efficient rulemaking process. The Committee's procedures will be coordinated with the Rules Division's "Rules on Rules" (see 1 Ill. Adm. Code 160).

Section 210.450 Publication of Notice and Hearing Dates

The Committee shall each week *submit for publication in the Register a list of the second notices received during the preceding week. The list will include the date on which the notice was received and the date of the meeting at which the Committee intends to consider the proposed rulemaking.* The list is intended only to inform the public and shall not preclude the Committee from considering or acting on the rulemaking at a different hearing. The Committee shall try to give reasonable notice of any change in the date of its intended consideration of rules to the affected agencies.

(Source: Added at 6 Ill. Reg. 9314, effective August 1, 1982)

Section 210.500 Use of Subpoenas

- a) The Committee is granted subpoena power by Section 7.03(b) of the Act. This power will be used only when an agency refuses:
 - 1) To appear before a Committee hearing.
 - 2) To provide information which is essential to the Committee's functions.
 - 3) To produce records or documents known to exist which are essential to the Committee's functions.
- b) Prior to the use of its subpoena power, the Committee will:
 - 1) Notify the agency head of the refusal and the fact that a subpoena may be used.
 - 2) Allow the agency to present its reasons for the refusal.
- c) The Director will issue a subpoena only when approved by all of the officers of the Committee or by a vote of the Committee.

TITLE 1: GENERAL PROVISIONS
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 220
REVIEW OF PROPOSED RULEMAKING

Section

220.1	Definitions (Renumbered)
220.2	Preliminary Review (Renumbered)
220.3	Request for Economic Analysis (Renumbered)
220.4	Format of Economic Analysis (Renumbered)
220.5	Second Notice: Required Information (Renumbered)
220.6	Second Notice: Additional Information (Renumbered)
220.7	Staff Review (Renumbered)
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220.9	Criteria for Review (Renumbered)
220.10	Objection; Notice of No Objection (Renumbered)
220.11	Certification of Objection; Statement of Specific Objections (Renumbered)
220.12	Response to Objection: Deadline, Format (Renumbered)
220.13	Response to Objection: Manner (Renumbered)
220.14	Review of Response to Objection (Renumbered)
220.15	Failure to Respond (Renumbered)
220.16	Limit of Substantive Changes (Renumbered)
220.17	Recommend Legislation (Renumbered)
220.100	Definitions
220.200	Preliminary Review
220.250	Committee Request for Agency Hearing
220.300	Request for Economic Analysis
220.400	Format of Economic Analysis
220.500	Second Notice: Required Information
220.600	Second Notice: Additional Information
220.700	Staff Review
220.800	Committee Hearing
220.900	Criteria for Review
220.950	Filing Prohibition Criteria
220.1000	Objection; Filing Prohibition; Notice of No Objection
220.1100	Certification of Objection; Statement of Specific Objections
220.1200	Response to Objection: Deadline, Format
220.1300	Response to Objection: Manner
220.1350	Certification of Filing Prohibition; Statement of Specific Objections
220.1400	Review of Response to Objection
220.1500	Failure to Respond
220.1600	Limit of Substantive Changes
220.1700	Recommend Legislation

AUTHORITY: Implementing Sections 4.03, 5.01, 7.06 and 7.06a and authorized by Section 7.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, pars. 1004.03, 1005.01, 1007.06, 1007.06a, 1007.09).

SOURCE: Adopted at 3 Ill. Reg. 8, p. 18, effective April 1, 1979; amended at 3 Ill. Reg. 49, p. 230, effective December 10, 1979; rules repealed, new rules adopted and codified at 4 Ill. Reg. 49, p. 166, effective December 1, 1980; amended at 5 Ill. Reg. 5164, effective May 15, 1981; amended at 6 Ill. Reg. 9314, effective August 1, 1982.

Section 220.1 Definitions (Renumbered)

(Source: Section 220.1 renumbered to Section 220.100 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.2 Preliminary Review (Renumbered)

(Source: Section 220.2 renumbered to Section 220.200 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.3 Request for Economic Analysis (Renumbered)

(Source: Section 220.3 renumbered to Section 220.300 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.4 Format of Economic Analysis (Renumbered)

(Source: Section 220.4 renumbered to Section 220.400 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.5 Second Notice: Required Information (Renumbered)

(Source: Section 220.5 renumbered to Section 220.500 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.6 Second Notice: Additional Information (Renumbered)

(Source: Section 220.6 renumbered to Section 220.600 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.7 Staff Review (Renumbered)

(Source: Section 220.7 renumbered to Section 220.700 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.8 Committee Hearing (Renumbered)

(Source: Section 220.8 renumbered to Section 220.800 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.9 Criteria for Review (Renumbered)

(Source: Section 220.9 renumbered to Section 220.900 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.10 Objection; Notice of No Objection (Renumbered)

(Source: Section 220.10 renumbered to Section 220.1000 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.11 Certification of Objection; Statement of Specific Objections (Renumbered)

(Source: Section 220.11 renumbered to Section 220.1100 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.12 Response to Objection: Deadline, Format (Renumbered)

(Source: Section 220.12 renumbered to Section 220.1200 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.13 Response to Objection: Manner (Renumbered)

(Source: Section 220.13 renumbered to Section 220.1300 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.14 Review of Response to Objection (Renumbered)

(Source: Section 220.14 renumbered to Section 220.1400 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.15 Failure to Respond (Renumbered)

(Source: Section 220.15 renumbered to Section 220.1500 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.16 Limit of Substantive Changes (Renumbered)

(Source: Section 220.16 renumbered to Section 220.1600 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.17 Recommend Legislation (Renumbered)

(Source: Section 220.17 renumbered to Section 220.1700 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.100 Definitions

As used in this part:

"First notice" means the notice of proposed rulemaking which must be given to the public by agencies pursuant to Section 5.01(a) of the Act. This notice is published in the Register.

"First notice period" means the period of time for public comment which begins on the day the first notice appears in the Register. This period must be at least 45 days in length.

"Second notice" means the notice of proposed rulemaking which must be given by agencies to the Committee pursuant to Section 5.01(b) of the Act. This notice must contain the information required by Section 220.500 of this part and should also contain the information requested by Section 220.600 of this part.

"Second notice period" means that period of time established by the Act for Committee review of proposed rulemaking. This period must follow the end of the first notice period. It commences on the day the second notice is received by the Committee and will not be more than 45 days in length.

(Source: Section 220.100 renumbered from Section 220.1 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.200 Preliminary Review

In the first five days after the first notice, the agency may request in writing that the Committee conduct an informal review of the agency's proposed rulemaking. When such a review is made, the Committee staff will review the proposed rulemaking, including the notice and the text. The Committee staff may raise questions or problems as a result of its review, and will discuss these questions or problems with the agency. This review will be based on the criteria in Section 220.900 and Section 220.950. Such review will be in addition to the normal review which is discussed in Sections 220.500 and 220.700.

(Source: Section 220.200 renumbered from Section 220.2 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.250 Committee Request for Agency Hearing

In the first 14 days after the first notice, the Committee or its Chairman may ask the agency to hold a public hearing on the proposed rulemaking. This request will be made in writing by the Director. Such a request may be made if the Chairman or the Committee *finds that a public hearing would make it easier for persons or groups to submit views and comments that might not otherwise be submitted* and instructs the Director to make such a request.

(Source: Added at 6 Ill. Reg. 9314, effective August 1, 1982)

Section 220.300 Request for Economic Analysis

In the first 30 days after the first notice, the Committee may request from the agency *an analysis of the economic and budgetary effects of the proposed rulemaking*. This request will be made in writing by the Director. The request will be made in each case unless it is clear that the effects in the areas outlined in the next section will not be substantial. The Committee will consider the information in the first notice and other available information in deciding whether or not to make this request.

(Source: Section 220.300 renumbered from Section 220.3 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.400 Format of Economic Analysis

If the Committee requests an analysis of the economic effects of the proposed rulemaking, the agency shall submit the analysis in writing to the Committee as part of the second notice. The analysis shall be in the form shown in Illustration A. It must include a discussion of at least these factors and an estimate of the effects of each factor in dollars:

- a) *Any direct economic effect on the persons who will be regulated by the rule.*
- b) *Any effect on the agency's budget.*
- c) *Any effect on the budgets of other State agencies.*
- d) *Any effect on State revenue.*

(Source: Section 220.400 renumbered from Section 220.4 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.500 Second Notice: Required Information

- a) *The second notice period will start on the day the second notice is received by the Committee. It will end 45 days later unless prior to that time the agency receives either:*
 - 1) *A statement of objection from the Committee. The agency may not adopt the rulemaking in this case until after it responds to the objection.*
 - 2) *A notice from the Committee stating that no objection will be issued.*
- b) The second notice must contain at least the following information:
 - 1) The name of the agency.
 - 2) The title of the proposed rulemaking.
 - 3) The date of the first notice.

- 4) *The text and location of any changes made in the rule during the first notice period.*
 - 5) *A final regulatory flexibility analysis, which shall include the following:*
 - A) *A summary of the issues raised by small businesses during the first notice period.*
 - B) *A description of actions taken on any alternatives to the proposed rule suggested by small businesses during the first notice period, including reasons for rejecting any alternatives not utilized.*
 - 6) *If requested by the Committee as provided in Section 220.300, an analysis of the economic and budgetary effects of the proposed rulemaking.*
 - 7) *A response to any recommendations made by the State Library for changes in the rules to make them comply with the codification scheme.*
 - 8) *The name of the person who will respond to Committee questions regarding the proposed rulemaking for the agency.*
- c) The second notice should be clearly identified as such, and shall be submitted to the Director at the following address:
- Joint Committee on Administrative Rules
509 South Sixth Street, Room 500
Springfield, Illinois 62701
- d) In two working days after the receipt by the Committee of a second notice, the Committee will notify the Rules Division and the agency of the date on which the second notice period started. Notices which do not contain all of the information required by this section and by Section 5.01(b) of the Act will not be accepted by the Committee. An agency which submits such a notice will be informed in writing of the specific reasons the notice was not accepted.

(Source: Amended at 6 Ill. Reg. 9314, effective August 1, 1982)

Section 220.600 Second Notice: Additional Information

The agency should include the following information in the second notice at the time it is sent to the Committee. These items are in addition to the items which must be included in the second notice under Section 220.500.

- a) *An evaluation of all of the comments on the proposed rulemaking received by the agency from interested persons during the first notice period. This evaluation should not include any questions raised by the Committee in a preliminary review (see Section 220.200). This evaluation should include:*
 - 1) *The date of any public hearing held during the first notice period and, if the hearing was held in response to a request for a hearing, the name of the person or group which made the request.*

- 2) A list of all of the persons and groups which made comments or which requested the opportunity to make comments.
 - 3) A list of all of the specific criticisms and suggestions which were raised in the comments.
 - 4) The agency's evaluation of each of the specific criticisms and suggestions.
 - 5) A statement that the agency has considered all of the comments which were received during the first notice period.
- b) *An analysis of the expected effects of the proposed rulemaking*, which should include at least these items:
- 1) Impact on the public.
 - 2) Changes in the agency's programs or structure which will result from the rule.
- c) Where the agency's proposed rule or amendment to an existing rule may have an impact on small business, a brief statement describing the methods used by the agency to comply with Section 4.03 of the Act.
- d) *A justification and rationale for the proposed rulemaking*, which should include at least these items:
- 1) Changes in statutory language which require the rulemaking.
 - 2) Changes in agency policy, procedures, or structure which require the rulemaking.
 - 3) Other rules and proposed rules of the agency, which relate to the rulemaking.
 - 4) Federal laws, rules, or funding requirements, which may affect the rulemaking.
 - 5) Court orders or rulings which relate to the rulemaking.

(Source: Amended at 6 Ill. Reg. 9314, effective August 1, 1982)

Section 220.700 Staff Review

The Committee staff will review each second notice which is received as provided in Section 220.500. The items outlined in Section 220.600 will be included in the review. This staff review will be based on the criteria in Section 220.900 and Section 220.950. The staff may raise questions or problems as a result of its review and will discuss these questions or problems with the agency. The staff will report the results of its review to the Committee, and may develop a recommendation for action by the Committee. The staff may recommend that the Committee issue an objection, prohibit filing of the rulemaking, develop legislation, take some other action, or take no action. Such staff recommendations shall be advisory only and shall not limit the Committee's power to take some other action. In order to encourage full and open discussion of proposed rulemaking, the staff will try to insure that the agency is aware of the substance of such recommendations prior to the hearing.

(Source: Section 220.700 renumbered from Section 220.7 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.800 Committee Hearing

The Committee will hold full and open hearings at least once each month on proposed rulemaking. The agenda for each hearing will be published as soon as possible prior to the hearing in the Register. Oral testimony will be taken at the hearing from the agency. Written comments will be considered from persons or groups which are affected by the rules as they relate to the criteria in Section 220.900 or Section 220.950. Such written comments should be sent to the Director at the following address:

Joint Committee on Administrative Rules

509 South Sixth Street, Room 500

Springfield, Illinois 62701

Comments should be received at least three working days prior to the hearing. The Committee will provide a copy of such comments to the agency, unless the person or group requests that a copy of the comments not be provided to the agency.

(Source: Amended at 6 Ill. Reg. 9314, effective August 1, 1982)

Section 220.900 Criteria for Review

The Committee will consider these criteria in its review of each proposed rulemaking:

a) Substantive

- 1) Is there legal authority for each part of the rulemaking?
- 2) Does each part of the rulemaking comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
- 3) Does each part of the rulemaking comply with state and federal constitutions, state and federal law, and case law?
- 4) Does it include adequate standards for the exercise of each discretionary power which is discussed in the rulemaking?

b) Propriety

- 1) Is there an adequate justification and rationale for the rulemaking and for any regulation of the public embodied in the rules?
- 2) Has the agency reasonably considered the economic and budgetary effects of the rulemaking as well as less costly alternatives?
- 3) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
- 4) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?

c) Procedural

- 1) Does it comply with Section 5.01 of the Act?
- 2) Does it comply with the requirements of the Rules Division (see 1 Ill. Adm. Code 160)?

- 3) Does it comply with any additional requirements which have been imposed on the agency by state or federal law?
- 4) Does it comply with the agency's own rules for its rulemaking process?
- 5) Was the agency responsive to public comments which were made on the rulemaking?
- 6) Did the agency comply with Section 4.03 of the Act, if applicable, in connection with the rulemaking?

(Source: Amended at 6 Ill. Reg. 9314, effective August 1, 1982)

Section 220.950 Filing Prohibition Criteria

If the Committee finds that the proposed rulemaking does not meet one or more of the criteria in Section 220.900, the Committee will then consider the following criteria:

- a) Is the rulemaking *a serious threat to the public interest*? In considering this question, the Committee will examine:
 - 1) Whether the rulemaking contains significant policies which have been rejected by the General Assembly in a proposed bill.
 - 2) Whether the rulemaking unconstitutionally or unlawfully discriminates against any citizens of the state.
 - 3) Whether the rulemaking unconstitutionally or unlawfully inhibits the free exercise of the rights of citizens of the state.
- b) Is the rulemaking *a serious threat to the public safety*? In considering this question, the Committee will examine:
 - 1) Whether the rulemaking could result in a significant decrease in the protection provided against threats to the safety of the citizens of the state.
 - 2) Whether the rulemaking could result in a significant increase in the threat of physical harm to the citizens of the state.
- c) Is the rulemaking *a serious threat to public welfare*? In considering this questions, the Committee will examine:
 - 1) Whether the rulemaking imposes significant unreasonable or unnecessary economic costs on citizens of the state.
 - 2) Whether the rulemaking would adversely affect the health or well-being of the citizens of the state.
 - 3) Whether the rulemaking would significantly and adversely affect the quality of life of the citizens of the state.

(Source: Added at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.1000 Objection; Filing Prohibition; Notice of No Objection

- a) If the Committee finds that the proposed rulemaking does not meet one or more of the criteria in Section 220.900, *the Committee will object to the proposed rulemaking.*
- b) If the Committee finds that the proposed rulemaking does not meet one or more of the criteria in Section 220.900 and also finds that the rulemaking meets one or more of the criteria in Section 220.950, the Committee will prohibit the filing of the proposed rulemaking. The prohibition will be limited to the portion of the proposed rulemaking which does not meet the criteria. *This action may be taken only by the affirmative vote of ten members of the Committee.*
- c) If the committee does not make such finding, *the Committee may notify the agency in writing that no objection will be issued.* Such a notice will be mailed to the agency in the first two working days after the day of the Committee hearing on the proposed rulemaking. Such notification will be made unless either:
 - 1) The second notice period has expired.
 - 2) The Committee finds, at the time of the hearing, that additional information is necessary in order to fully review the rulemaking.
- d) Upon receiving such notice that no objection will be issued, the agency may proceed to adopt the proposed rulemaking.
- e) A notice of no objection which is issued by the Committee should not be taken as implying approval in any way of the content of the rulemaking.

(Source: Section 220.1000 renumbered from Section 220.10 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.1100 Certification of Objection; Statement of Specific Objections

- a) If the Committee objects to a proposed rulemaking, *it shall certify the fact of the objection to the agency.* Such certification will be made in the first five working days after the day of the hearing. The form which is used for this purpose is shown in Illustration B. *The certification shall include a statement of the specific objections of the Committee to the proposed rulemaking.*
- b) Each statement of specific objections shall also be submitted to the Rules Division to be published in the Register.

(Source: Section 220.1100 renumbered from Section 220.11 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.1200 Response to Objection: Deadline, Format

The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections. The agency response should address each of the specific objections which are stated by the Committee. The response should be concise, but complete, and

should clearly state the nature of the response and the rationale for the response. The response should be made on the form shown in Illustration C.

(Source: Section 220.1200 renumbered from Section 220.12 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.1300 Response to Objection: Manner

The agency must respond to an objection by the Committee in one of the following ways:

- a) *Modify the proposed rulemaking to meet all of the specific objections stated by the Committee. The complete text of the rules including all of the changes should be included in the response.*
- b) *Withdraw the proposed rulemaking.* The agency should state the specific objections of the Committee or other reasons which are the basis of the withdrawal.
- c) *Refuse to modify or withdraw the proposed rulemaking.* The agency should present in its response its reasons for refusing to modify or withdraw the proposed rulemaking.

(Source: Section 220.1300 renumbered from Section 220.13 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.1350 Certification of Filing Prohibition; Statement of Specific Objections

- a) If the Committee prohibits the filing of a proposed rulemaking, *it shall certify the prohibition to the agency and the Secretary of State.* Such certification will be made in the first five working days after the day of the hearing. The form used for this purpose is shown in Illustration D. The certification shall indicate the specific affected portion of the rulemaking and shall include a statement of the specific objections of the Committee to the proposed rulemaking.
- b) A notice of filing prohibition which includes the statement of specific objections shall be submitted to the Rules Division to be published in the Illinois Register.
- c) The proposed rulemaking may not be filed with the Rules Division for at least 180 days after the certification is received by the Secretary of State. The agency is prohibited from enforcing or invoking the rulemaking.
- d) The Committee shall introduce a joint resolution in either house of the General Assembly to continue the prohibition. The action will be taken as soon as practicable after the certification of prohibition.
- e) Passage of the joint resolution by the General Assembly within the 180 day period shall have the effect of permanently prohibiting the agency from filing the proposed rulemaking.

(Source: Added at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.1400 Review of Response to Objection

The Committee will review each of the responses to its objections which are made by agencies. If an agency modifies a proposed rulemaking to meet the specific objections of the Committee, the

Committee will examine each of the specific changes made to meet the objections. *If the Committee finds that the changes do not remedy the objections, it will so notify the agency. It will also submit a copy of such a notice to the Rules Division to be published in the Register.* The notice will include a statement of the reasons the Committee found that the changes do not remedy the objections.

(Source: Section 220.1400 renumbered from Section 220.14 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.1500 Failure to Respond

If the Committee does not receive a response to an objection from the agency within 90 days after the receipt of the objection by the agency, the rulemaking will be withdrawn by operation of law. Following the end of the 90 days, the Director will send a notice of the fact of the withdrawal to the Rules Division. The notice will state that (1) the agency has failed to respond within the 90 days, and (2) the rulemaking has been withdrawn by operation of law. The date on which the rulemaking will be withdrawn is the day after the last day of the 90 day period. The agency may not adopt a rulemaking which has been withdrawn.

(Source: Section 220.1500 renumbered from Section 220.15 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.1600 Limit of Substantive Changes

After the start of the second notice period, no substantive change may be made to a proposed rule unless it is made in response to an objection or suggestion of the Committee. The Committee will review the text of adopted rules to insure that substantive changes have not been made in violation of this provision of the Act.

(Source: Section 220.1600 renumbered from Section 220.16 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 220.1700 Recommend Legislation

The Committee may draft legislation as a result of its review of proposed rulemaking. The purpose of such legislation will be to provide authority, for the rulemaking, to resolve conflicts between the rules and statutes, to clarify the intent of acts which require the rulemaking, or to deal with other issues which are discovered in its review. Such legislation will be approved by a majority vote. It will then be introduced in either house of the General Assembly.

(Source: Section 220.1700 renumbered from Section 220.17 at 5 Ill. Reg. 5164, effective May 15, 1981)

TITLE 1: GENERAL PROVISIONS
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 230
REVIEW OF EMERGENCY RULEMAKING

Section	
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230.2	Definition (Renumbered)
230.3	Staff Review (Renumbered)
230.4	Primary Criteria for Review (Renumbered)
230.5	Secondary Criteria for Review (Renumbered)
230.6	Objection (Renumbered)
230.7	Certification of Objection; Statement of Specific Objections (Renumbered)
230.8	Response to Objection: Format (Renumbered)
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230.100	Basic Policy
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230.300	Staff Review
230.400	Primary Criteria for Review
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230.600	Objection; Suspension
230.700	Certification of Objection; Statement of Specific Objections
230.800	Response to Objection: Deadline, Format
230.900	Response to Objection: Manner
230.1000	Failure to Respond
230.1100	Certification of Suspension; Statement of Specific Objections

AUTHORITY: Implementing Sections 5.02 and 7.07 and authorized by Section 7.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, pars. 1005.02, 1007.07, and 1007.09).

SOURCE: Adopted at 3 Ill. Reg. 49, p. 230, effective December 10, 1979; rules repealed, new rules adopted and codified at 4 Ill. Reg. 49, p. 166, effective December 1, 1980; amended at 5 Ill. Reg. 5164, effective May 15, 1981.

Section 230.1 Basic Policy (Renumbered)

(Source: Section 230.1 renumbered to Section 230.100 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 230.2 Definition (Renumbered)

(Source: Section 230.2 renumbered to Section 230.200 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 230.3 Staff Review (Renumbered)

(Source: Section 230.3 renumbered to Section 230.300 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 230.4 Primary Criteria for Review (Renumbered)

(Source: Section 230.4 renumbered to Section 230.400 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 230.5 Secondary Criteria for Review (Renumbered)

(Source: Section 230.5 renumbered to Section 230.500 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 230.6 Objection (Renumbered)

(Source: Section 230.6 renumbered to Section 230.600 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 230.7 Certification of Objection; Statement of Specific Objections (Renumbered)

(Source: Section 230.7 renumbered to Section 230.700 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 230.8 Response to Objection: Format (Renumbered)

(Source: Section 230.8 renumbered to Section 230.800 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 230.9 Response to Objection: Manner (Renumbered)

(Source: Section 230.9 renumbered to Section 230.900 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 230.10 Failure to Respond (Renumbered)

(Source: Section 230.10 renumbered to Section 230.1000 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 230.100 Basic Policy

- a) The fact that situations occur in which agencies must take prompt action to adopt rules is recognized by the Committee and the Act. In some of these instances, emergency rules must be adopted under the process provided for this purpose by Section 5.02 of the Act. However, the Committee believes that public notice and comment is an essential part of the rulemaking process, which should only be by-passed for very serious reasons. The use of the emergency process must be limited. The process should only be used in a situation which *reasonably constitutes a threat to the public interest, safety or welfare, and requires the adoption of rules upon fewer days' notice than is required by Section 5.01 of the Act.*
- b) The Committee is empowered by Section 7.07 of the Act *to examine any rule.* The Committee will review each rule adopted through the use of emergency rulemaking under this power. The purpose of this review is to insure that the use of the process is limited to only those situations which meet the requirements of Section 5.02 of the Act. The criteria which are used in this review are stated in Sections 230.400, and 230.500 and 230.550 of this part.

(Source: Section 230.100 renumbered from Section 230.1 and amended at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 230.200 Definition

As used in this part, "emergency rulemaking" means both the process of adopting a rule as provided in Section 5.02 of the Act and the rule which is adopted by that process.

(Source: Section 230.200 renumbered from Section 230.2 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 230.300 Staff Review

The Committee staff will review each emergency rulemaking, including both the notice and the text of the rulemaking. This review will be based on the criteria in Sections 230.400, and 230.500 and

230.550 of this part. The Committee staff may raise questions or problems as a result of its review and will discuss these questions or problems with the agency. The staff will report the results of its review to the Committee and may develop a recommendation for action by the Committee. Such staff recommendations shall be advisory only and shall not limit the Committee's power to take some other action. In order to encourage full and open discussion of emergency rulemaking, the staff will try to insure that the agency is aware of the substance of such recommendations prior to the hearing.

(Source: Section 230.300 renumbered from Section 230.3 and amended at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 230.400 Primary Criteria for Review

The Committee will first consider these criteria in its review of emergency rulemaking:

- a) Does the agency's statement of the need for the emergency rulemaking show that it complies with Section 5.02 of the Act? The statement must show that *a situation exists which reasonably constitutes a threat to the public interest, safety or welfare and which requires the adoption of the rule upon fewer days' notice than is required by Section 5.01 of the Act.*
- b) Has the agency given an adequate reason for not complying with the notice and hearing requirements of the Act?
- c) Is the rulemaking limited to what is required by the emergency? It should contain no provisions which are not required to meet the emergency.
- d) Did the agency take actions to make the emergency rulemaking known to the persons who may be affected by it?
- e) Has the agency adopted the same rules, or rules which have *substantially the same purpose and effect*, through the use of the emergency process in the past 24 months?

(Source: Section 230.400 renumbered from Section 230.4 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 230.500 Secondary Criteria for Review

If the rulemaking is found to meet the criteria in Section 230.400, the Committee will then consider these criteria in its review of each emergency rulemaking:

- a) Substantive
 - 1) Is there legal authority for each part of the rulemaking?
 - 2) Does each part of the rulemaking comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
 - 3) Does each part of the rulemaking comply with state and federal constitutions, state and federal law, and case law?
 - 4) Does it include adequate standards for the exercise of each discretionary power which is discussed in the rulemaking?

b) Propriety

- 1) Is there an adequate justification and rationale for the rulemaking and for any regulation of the public embodied in the rules?
- 2) Has the agency reasonably considered the economic and budgetary effects of the rulemaking as well as less costly alternatives?
- 3) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
- 4) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?

c) Procedural

- 1) Does it comply with the requirements of the Rules Division (see 1 Ill. Adm. Code 160)?
- 2) Does it comply with any additional requirements which have been imposed on the agency by state or federal law?
- 3) Does it comply with the agency's own rules for its rulemaking process?

(Source: Section 230.500 renumbered from Section 230.5 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 230.550 Suspension Criteria

If the Committee finds that the emergency rulemaking does not meet one or more of the criteria in Sections 230.400 and 230.500, the Committee will then consider the following criteria:

- a) Is the rulemaking *a serious threat to the public interest*? In considering this question, the Committee will examine:
 - 1) Whether the rulemaking contains significant policies which have been rejected by the General Assembly in a proposed bill.
 - 2) Whether the rulemaking unconstitutionally or unlawfully discriminates against any citizens of the state.
 - 3) Whether the rulemaking unconstitutionally or unlawfully inhibits the free exercise of the rights of citizens of the state.
- b) Is the rulemaking *a serious threat to the public safety*? In considering this question, the Committee will examine:
 - 1) Whether the rulemaking could result in a significant decrease in the protection provided against threats to the safety of the citizens of the state.
 - 2) Whether the rulemaking could result in a significant increase in the threat of physical harm to the citizens of the state.
- c) Is the rulemaking *a serious threat to the public welfare*? In considering this questions, the Committee will examine:

- 1) Whether the rulemaking imposes significant unreasonable or unnecessary economic costs on citizens of the state.
- 2) Whether the rulemaking would adversely affect the health or well-being of the citizens of the state.
- 3) Whether the rulemaking would significantly and adversely affect the quality of life of the citizens of the state.

(Source: Added at 5 Ill. Reg. page 5164, effective May 15, 1981)

Section 230.600 Objection; Suspension

- a) If the Committee finds that the emergency rulemaking does not meet one or more of the criteria in Sections 230.400 and 230.500, *it will object to the rules*. The fact that the Committee does not object to a rulemaking should not be taken as implying approval in any way of the content of the rulemaking.
- b) If the Committee finds that the emergency rulemaking does not meet one or more of the criteria in Sections 230.400 and 230.500 and also finds that the rulemaking meets one or more of the criteria in Section 230.600, the Committee will suspend the emergency rules. The suspension will be limited to the portion of the emergency rules which does not meet the criteria. *This action may be taken only by the affirmative vote of ten members of the Committee.*

(Source: Section 230.600 renumbered from Section 230.6 and amended at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 230.700 Certification of Objection; Statement of Specific Objections

- a) If the Committee objects to an emergency rulemaking, *it shall certify the fact of the objection to the agency*. Such certification will be made in the first five working days after the day of the hearing. The form which is used for this purpose is shown in Illustration E. *The certification shall include a statement of the specific objections of the Committee to the rules.*
- b) Each statement of specific objections shall also be submitted to the Rules Division to be published in the Register.

(Source: Section 230.700 renumbered from Section 230.7 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 230.800 Response to Objection: Deadline, Format

The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections. The agency response should address each of the specific objections which are stated by the Committee. The response should be concise, but complete, and should clearly state the nature of the response and the rationale for the response. The response should be made in the manner shown in Illustration G.

(Source: Section 230.800 renumbered from Section 230.8 and amended at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 230.900 Response to Objection: Manner

The agency must respond to an objection by the Committee in one of the following ways:

- a) *Modify the emergency rulemaking to meet all of the specific objections stated by the Committee.* The complete text of the rules including all of the changes should be included in the response. These changes may be made by submitting a notice with the changes to the Rules Division to be published in the Register. Modifying emergency rules by publishing such a notice will not be deemed to be a new rulemaking. It will not extend the 150 day effective period of the rules, nor will it be deemed to violate the provision of the Act which prohibits adoption of the same emergency rules twice.
- b) *Repeal the emergency rulemaking.* This may be done by submitting a notice to the Rules Division as provided in Section 160.1350 of the Rules on Rules (1 Ill. Adm. Code 160.1350). The agency should state the specific objections of the Committee or other reasons which are the basis of the repeal.
- c) *Refuse to modify or repeal the emergency rulemaking.* The agency should present in its response its reasons for refusing to modify or repeal the emergency rulemaking.

(Source: Section 230.900 renumbered from Section 230.9 and amended at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 230.1000 Failure to Respond

Failure of an agency to respond to an objection to an emergency rule within 90 days of the receipt of the objection shall be deemed to be a refusal to modify or repeal the rule.

(Source: Section 230.1000 renumbered from Section 230.10 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 230.1100 Certification of Suspension; Statement of Specific Objections

- a) If the Committee suspends an emergency rulemaking, *it shall certify the suspension to the agency and the Secretary of State.* Such certification will be made in the first five working days after the day of the hearing. The form used for this purpose is shown in Illustration F. The certification shall indicate the specific affected portion of the rulemaking and shall include a statement of the specific objections of the Committee to the emergency rules.
- b) A notice of suspension which includes the statement of specific objections shall be submitted to the Rules Division to be published in the Illinois Register.
- c) The effectiveness of the emergency rules will be immediately suspended on receipt of the certification by the Secretary of State. Such suspension will be indicated on the face of

the rules by the Rules Division. The suspension shall last at least 180 days after the certification is received by the Secretary of State. The agency is prohibited from enforcing or invoking the suspended rules.

- d) The Committee shall introduce a joint resolution in either house of the General Assembly to continue the suspension. This action will be taken as soon as practicable after the certification of suspension.
- e) Passage of the joint resolution by the General Assembly within the 180 day period shall have the effect of repealing the emergency rules. The Rules Division will immediately remove such rules from the collection of effective rules on passage of such a joint resolution.

(Source: Added at 5 Ill. Reg. 5164, effective May 15, 1981)

TITLE 1: GENERAL PROVISIONS
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 240
REVIEW OF PEREMPTORY RULEMAKING

Section

240.1	Basic Policy (Renumbered)
240.2	Definitions (Renumbered)
240.3	Submission; Staff Review (Renumbered)
240.4	Staff Report (Renumbered)
240.5	Primary Criteria for Review (Renumbered)
240.6	Secondary Criteria for Review (Renumbered)
240.7	Objection (Renumbered)
240.8	Certification of Objection; Statement of Specific Objections (Renumbered)
240.9	Response to Objection: Format (Renumbered)
240.10	Response to Objection: Manner (Renumbered)
240.11	Rulemaking in Response to Objection (Renumbered)
240.12	Failure to Respond (Renumbered)
240.100	Basic Policy
240.200	Definitions
240.300	Submission; Staff Review
240.400	Staff Report
240.500	Primary Criteria for Review
240.600	Secondary Criteria for Review
240.650	Suspension Criteria
240.700	Objection; Suspension
240.800	Certification of Objection; Statement of Specific Objections
240.900	Response to Objection: Format
240.1000	Response to Objection: Manner
240.1100	Rulemaking in Response to Objection
240.1200	Failure to Respond
240.1300	Certification of Suspension; Statement of Specific Objections
ILLUSTRATION A	Agency Analysis of Economic and Budgetary Effects of Proposed Rulemaking
ILLUSTRATION B	Certification of Objections to Proposed Rulemaking
ILLUSTRATION C	Agency Response to Joint Committee Objection to Proposed Rulemaking
ILLUSTRATION D	Certification of Filing Prohibition of Proposed Rulemaking
ILLUSTRATION E	Certification of Objection to Emergency or Peremptory Rules
ILLUSTRATION F	Certification of Suspension of Emergency or Peremptory Rules
ILLUSTRATION G	Agency Response to Joint Committee Objection to Emergency or Peremptory Rules

AUTHORITY: Implementing Sections 5.02, 7.04, and 7.07 and authorized by Section 7.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, pars. 1005.02, 1007.04, 1007.07, and 1007.09).

SOURCE: Adopted at 3 Ill. Reg. 49, p. 230, effective December 10, 1979; rules repealed, new rules adopted and codified at 4 Ill. Reg. 49, p. 166, effective December 1, 1980; amended at 5 Ill. Reg. 5164, effective May 15, 1981.

Section 240.1 Basic Policy (Renumbered)

(Source: Section 240.1 renumbered to Section 240.100 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.2 Definitions (Renumbered)

(Source: Section 240.2 renumbered to Section 240.200 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.3 Submission; Staff Review (Renumbered)

(Source: Section 240.3 renumbered to Section 240.300 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.4 Staff Report (Renumbered)

(Source: Section 240.4 renumbered to Section 240.400 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.5 Primary Criteria for Review (Renumbered)

(Source: Section 240.5 renumbered to Section 240.500 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.6 Secondary Criteria for Review (Renumbered)

(Source: Section 240.6 renumbered to Section 240.600 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.7 Objection (Renumbered)

(Source: Section 240.7 renumbered to Section 240.700 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.8 Certification of Objection; Statement of Specific Objections (Renumbered)

(Source: Section 240.8 renumbered to Section 240.800 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.9 Response to Objection: Format (Renumbered)

(Source: Section 240.9 renumbered to Section 240.900 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.10 Response to Objection: Manner (Renumbered)

(Source: Section 240.10 renumbered to Section 240.1000 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.11 Rulemaking in Response to Objection (Renumbered)

(Source: Section 240.11 renumbered to Section 240.1100 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.12 Failure to Respond (Renumbered)

(Source: Section 240.12 renumbered to Section 240.1200 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.100 Basic Policy

- a) The fact that situations occur in which agencies are required by a federal law, federal rules and regulations, or a court order to take prompt action to adopt rules is recognized by the Committee and the Act. In some of these instances, peremptory rules must be adopted under the process provided for this purpose by Section 5.03 of the Act. However, the Committee believes that public notice and comment is an essential part of the rulemaking process, which should only be by-passed for very serious reasons. The use of the peremptory process must be limited. The process should only be used in a situation which precludes the agency's compliance with the general rulemaking requirements of the Act.

- b) The Committee is empowered by Section 7.07 of the Act to *examine any rule*. The Committee will review each rule adopted through the use of peremptory rulemaking under this power. The purpose of this review is to insure that use of the process is limited to only those situations which meet the requirements of Section 5.03 of the Act. The criteria which are used in this review are stated in Sections 240.500, and 240.600 and 240.650 of this part.

(Source: Section 240.100 renumbered from Section 240.1 and amended at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.200 Definitions

As used in this part:

"Conditions which preclude compliance with the general rulemaking requirements imposed by Section 5.01 of the Act" includes only those conditions which make it impossible to comply with the notice or hearing requirements of the Act. A federal law, federal rule or regulation, or court order which merely makes it more difficult to comply or which prescribes the content of such rulemaking does not make it impossible to comply.

"Federal rules and regulations" means those rules which are or will be published in the Code of Federal Regulations.

"Peremptory rulemaking" means both the process of adopting a rule as provided in Section 5.03 of the Act and the rule which is adopted by that process.

(Source: Section 240.200 renumbered from Section 240.2 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.300 Submission; Staff Review

On the same day that a notice of peremptory rulemaking is filed with the Rules Division, the agency shall submit to the Committee a copy of the court order or specific citation of the federal law or federal rules or regulations which require the rulemaking. The staff will review the peremptory rulemaking, including the notice and the text. This staff review will be based on the criteria in Sections 240.500, and 240.600 and 240.650. The staff may raise questions or problems as a result of its review of the rulemaking, and will discuss these questions or problems with the agency.

(Source: Section 240.300 renumbered from Section 240.3 and amended at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.400 Staff Report

The staff will report the results of its review to the Committee and may develop a recommendation for action by the Committee. Such staff recommendations shall be advisory only and shall not limit the Committee's power to take some other action. In order to encourage full and open discussion, the staff will try to insure that the agency is aware of the substance of the recommendations.

(Source: Section 240.400 renumbered from Section 240.4 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.500 Primary Criteria for Review

The Committee will first consider these criteria in its review of peremptory rulemaking:

- a) Was the agency *precluded from complying with the general rulemaking requirements imposed by Section 5.01 of the Act*, as that phrase is defined in Section 240.300 of this part?
- b) Was the agency *required to adopt rules as a direct result of federal law, federal rules and regulations, or court order*?
- c) Is the rulemaking limited to what is required by the federal law, federal rules and regulations, or court order? It should contain no provisions which are not required.
- d) Has the agency given an adequate reason for not complying with the notice and hearing requirements of the Act?
- e) Did the agency file the notice within 30 days after the change in the rules was required as required by the Act?

(Source: Section 240.500 renumbered from Section 240.5 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.600 Secondary Criteria for Review

If the rulemaking is found to meet the criteria in Section 240.500, the Committee will then consider these criteria in its review of each peremptory rulemaking:

- a) Substantive
 - 1) Is there legal authority for each part of the rulemaking?
 - 2) Does each part of the rulemaking comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
 - 3) Does each part of the rulemaking comply with state and federal constitutions, state and federal law, and case law?
 - 4) Does it include adequate standards for the exercise of each discretionary power which is discussed in the rulemaking?
- b) Propriety
 - 1) Is there an adequate justification and rationale for the rulemaking and for any regulation of the public embodied in the rules?
 - 2) Has the agency reasonably considered the economic and budgetary effects of the rulemaking as well as less costly alternatives?
 - 3) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
 - 4) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?
- c) Procedural
 - 1) Does it comply with the requirements of the Rules Division (see 1 Ill. Adm. Code 160)?

- 2) Does it comply with any additional requirements which have been imposed on the agency by state or federal law?
- 3) Does it comply with the agency's own rules for its rulemaking process?

(Source: Section 240.600 renumbered from Section 240.6 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.650 Suspension Criteria

If the Committee finds that the peremptory rulemaking does not meet one or more of the criteria in Sections 240.500 and 240.600, the Committee will then consider the following criteria:

- a) Is the rulemaking *a serious threat to the public interest*? In considering this question, the Committee will examine:
 - 1) Whether the rulemaking contains significant policies which have been rejected by the General Assembly in a proposed bill.
 - 2) Whether the rulemaking unconstitutionally or unlawfully discriminates against any citizens of the state.
 - 3) Whether the rulemaking unconstitutionally or unlawfully inhibits the free exercise of the rights of citizens of the state.
- b) Is the rulemaking *a serious threat to the public safety*? In considering this question, the Committee will examine:
 - 1) Whether the rulemaking could result in a significant decrease in the protection provided against threats to the safety of the citizens of the state.
 - 2) Whether the rulemaking could result in a significant increase in the threat of physical harm to the citizens of the state.
- c) Is the rulemaking *a serious threat to the public welfare*? In considering this question, the Committee will examine:
 - 1) Whether the rulemaking imposes significant unreasonable or unnecessary economic costs on citizens of the state.
 - 2) Whether the rulemaking would adversely affect the health or well-being of the citizens of the state.
 - 3) Whether the rulemaking would significantly and adversely affect the quality of life of the citizens of the state.

(Source: Added at 5 Ill. Reg. page 5164, effective May 15, 1981)

Section 240.700 Objection; Suspension

- a) If the Committee finds that the peremptory rulemaking does not meet one or more of the criteria in Sections 240.500 and 240.600, it will object to the peremptory rules. The fact

that the Committee does not object to a rulemaking should not be taken as implying in any way approval of the content of the rulemaking.

- b) If the Committee finds that the peremptory rulemaking does not meet one or more of the criteria in Sections 240.500 and 240.600 and also finds that the rulemaking meets one or more of the criteria in Section 240.650, the Committee will suspend the peremptory rules. The suspension will be limited to the portion of the peremptory rules which does not meet the criteria. *This action may be taken only by the affirmative vote of ten members of the Committee.*

(Source: Section 240.700 renumbered from Section 240.7 and amended at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.800 Certification of Objection; Statement of Specific Objections

- a) If the Committee objects to a peremptory rulemaking, it *shall certify the fact of the objection to the agency*. Such certification will be made in the first five working days after the day of the hearing. The form which is used for this purpose is shown in Illustration E. *The certification shall include a statement of the specific objections of the Committee to the rules.*
- b) Each statement of specific objections shall also be submitted to the Rules Division to be published in the Register.

(Source: Section 240.800 renumbered from Section 240.8 and amended at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.900 Response to Objection: Format

The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections. The agency response shall address each of the specific objections which are stated by the Committee. The response should be concise, but complete, and should clearly state the nature of the response and the rationale for the response. The response should be made in the manner shown in Illustration G.

(Source: Section 240.900 renumbered from Section 240.9 and amended at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.1000 Response to Objection: Manner

The agency must respond to an objection by the Committee in one of the following ways:

- a) *Amend the peremptory rules to meet all of the specific objections stated by the Joint Committee.*
- b) *Repeal the peremptory rules.* The agency should state the specific objection of the Committee or other reasons which are the basis of the repeal.
- c) *Refusal to amend or repeal the peremptory rules.* The agency should present in its response its reasons for refusing to amend or repeal the rules.

(Source: Section 240.1000 renumbered from Section 240.10 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.1100 Rulemaking in Response to Objection

If an agency elects to amend or repeal a rule in response to an objection, it should begin rulemaking for that purpose by giving notice as required by Section 5.01 of the Act. The Committee will give priority to rulemaking which was begun to meet an objection in setting its agenda. The agency should complete rulemaking within 180 days after giving notice in the Register.

(Source: Section 240.1100 renumbered from Section 240.11 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.1200 Failure to Respond

Failure of an agency to respond to an objection by the Committee to a peremptory rule within 90 days of the receipt of the objection shall be deemed to be a refusal to amend or repeal the rule.

(Source: Section 240.1200 renumbered from Section 240.12 at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.1300 Certification of Suspension; Statement of Specific Objections

- a) *If the Committee suspends a peremptory rulemaking, it shall certify the suspension to the agency and the Secretary of State. Such certification will be made in the first five working days after the day of the hearing. The form used for this purpose is shown in Illustration F. The certification shall indicate the specific affected portion of the rulemaking and shall include a statement of the specific objections of the Committee to the peremptory rules.*
- b) *A notice of suspension which includes the statement of specific objections shall be submitted to the Rules Division to be published in the Illinois Register.*
- c) *The effectiveness of the peremptory rules will be immediately suspended on receipt of the certification by the Secretary of State. Such suspension will be indicated on the face of the rules by the Rules Division. The suspension shall last at least 180 days after the certification is received by the Secretary of State. The agency is prohibited from enforcing or invoking the suspended rules.*
- d) *The Committee shall introduce a joint resolution in either house of the General Assembly to continue the suspension. This action will be taken as soon as practicable after the certification of suspension.*
- e) *Passage of the joint resolution by the General Assembly within the 180 day period shall have the effect of repealing the peremptory rules. The Rules Division will immediately remove such rules from the collection of effective rules on passage of such a joint resolution.*

(Source: Added at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240. ILLUSTRATION A Agency Analysis of Economic and Budgetary Effects of Proposed Rulemaking

Agency: _____

Proposed Rulemaking: _____

1. Direct economic effect on the persons who will be regulated by the rule.

DiscussionSpecific Estimated Effect
\$

2. Effect on the agency's budget.

DiscussionSpecific Estimated Effect
\$

3. Effect on the budgets of other state agencies.

DiscussionSpecific Estimated Effect
\$

4. Effect on State revenue.

DiscussionSpecific Estimated Effect
\$

5. Other considerations relevant to the economic and budgetary effects of the proposed rulemaking.

Discussion_____
Signature of Agency Official

See Sections 220.300, 220.400 and 220.500)

Section 240. ILLUSTRATION B Certification of Objection to Proposed Rulemaking (Renumbered)

County of Sangamon)

)

State of Illinois)

The Joint Committee on Administrative Rules hereby certifies that pursuant to Section 7.04 and 7.06 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting on _____ (Date), objected to _____ (Title of Rulemaking), proposed by _____ (Name of Agency).

A statement of the Joint Committee's specific objections accompanies this certification.

Please take notice that failure to respond within 90 days of receipt of this Statement of Objection shall constitute withdrawal of the proposed rulemaking published in the _____ (Date) Illinois Register in its entirety.

(Signature)

(By: _____)

(Signature)

(Typewritten Name)

(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and sworn to before me this _____ (Date) day of _____ (Month), 19____ (Year).

Notary Public

(See Section 220.1100)

(Source: Amended at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.ILLUSTRATION C Agency Response to Joint Committee Objection to Proposed RulemakingDate:

Agency:

Title and Subject of Rule:

Response (Check One):

Modification of Rulemaking to Meet Objections

Withdrawal of Rulemaking

Refusal to Modify or Withdraw

Signature of Agency OfficialAgency Response to Specific Joint Committee Objections:

(Respond to each objection raised by the Joint Committee, indicating clearly the intended action of the agency in response to each objection and the rationale for such response. Use Additional pages as necessary.)

(See Section 220.1200)

Section 240.ILLUSTRATION D Certification of Filing Prohibition of Proposed Rulemaking

County of Sangamon)

)

State of Illinois)

The Joint Committee on Administrative Rules, hereby certifies that, pursuant to Section 7.06a of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting _____ (Date), prohibited the filing of _____ (Title of Rulemaking or Portion Thereof), proposed by _____ (Name of Agency).

A statement of the Joint Committee's specific objections accompanies this certification.

Please take notice that the agency is prohibited from filing the rulemaking with the Secretary of State and from enforcing or invoking for any reason the rulemaking for at least 180 days from the date this certification and statement are received by the Secretary of State.

Certified _____ (Date).

(Signature)

(By:

(Signature)

(Typewritten Name)

(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and Sworn to before me this _____ (Date) day of _____ (Month), 19____ (Year).

Notary Public

(See Section 220.1350)

(Source: Former Illustration D renumbered to Illustration E, new Illustration D adopted at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240. ILLUSTRATION E Certification of Objection to Emergency or Peremptory Rules

County of Sangamon)

)

State of Illinois)

The Joint Committee on Administrative Rules hereby certifies that, pursuant to Section 7.04 and 7.07 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting on _____ (Date), objected to the _____ (Name of Agency)'s, _____ (Emergency, Peremptory) rules entitled or concerning _____ (Title or Subject of Rules) which were published in the _____ (Date), Illinois Register.

A statement of the Joint Committee's specific objections accompanies this certification.

Please take notice that failure of the Agency to respond to the Joint Committee's objections to a rule within 90 days of receipt of this Certification of Objection shall constitute refusal to amend or repeal the rule.

Certified _____ (Date).

(Signature)

(By: _____)

(Signature)_____
(Typewritten Name)_____
(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and sworn to before me this ____ (Date) day of ____ (Month), 19 ____ (Year).

Notary Public

See Sections 230.600 and 240.800)

(Source: Former Illustration E renumbered to Illustration G, new Illustration E renumbered from Illustration D and amended at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240.ILLUSTRATION F Certification of Suspension of Emergency or Peremptory Rules

County of Sangamon)

)

State of Illinois)

The Joint Committee on Administrative Rules hereby certifies that, pursuant to Section 7.07a of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules, at its meeting on _____ (Date), suspended the _____ (Name of Agency)'s, _____ (Emergency, Peremptory) rules entitled or concerning _____ (Title or Subject of Rules or Portion Thereof) which were published in the _____ (Date) Illinois Register.

A statement of the Joint Committee's specific objections accompanies this certification.

Please take notice that the agency is prohibited from enforcing, or invoking for any reason, these rules which have been suspended and from filing with the Secretary of State any rule having substantially the same purpose and effect as these suspended rules for at least 180 days from the date this certification and statement are received by the Secretary of State.

Certified _____ (Date).

(Signature)

(By: _____)

(Signature)

(Typewritten Name)

(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and Sworn to before me this _____ (Date) day of _____ (Month), 19 _____ (Year).

Notary Public

(See Sections 230.1100 and 240.1300)

(Source: Added at 5 Ill. Reg. 5164, effective May 15, 1981)

Section 240. ILLUSTRATION G Agency Response to Joint Committee Objection to Emergency or Peremptory Rules

Date: _____

Agency: _____

Title and Subject of Rule: _____

Response (Check One): _____ Initiate rulemaking to repeal the rules to meet the Joint Committee's objection

_____ Initiate rulemaking to amend the rules to meet the Joint Committee's objection

_____ Refusal to initiate rulemaking to remedy the Joint Committee's objection

If rulemaking will be initiated, date notice of proposed rulemaking was, or is expected to be, published in the Illinois Register: _____

Agency Response to Specific Joint Committee Objections:

(Respond to each of the specific objections raised by the Joint Committee, indicating clearly the intended action of the agency in response to each objection and the rationale for such response. Use Additional pages as necessary.)

Signature of Agency Official

(See Sections 230.800 and 240.1000)

(Source: Illustration G renumbered from Illustration E at 5 Ill. Reg. 5164, effective May 15, 1981)

TITLE 1: GENERAL PROVISIONS
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 250
FIVE-YEAR EVALUATION OF ALL EXISTING RULES

Section	
250.100	Authority
250.200	Relation to Other Reviews
250.300	Subject Categories
250.400	Schedule: First Year
250.500	Schedule: Second Year
250.600	Schedule: Third Year
250.700	Schedule: Fourth Year
250.800	Schedule: Fifth Year
250.900	Notice to Agencies
250.1000	Initial Questions
250.1100	Staff Review
250.1200	Public Hearings
250.1300	Grouping of Rules
250.1400	Criteria for Review
250.1500	Staff Report; Agency Response
250.1600	Hearing on Staff Report
250.1700	Actions as Results of Review
250.1800	Actions: Objections
250.1900	Agency Response to Objection
250.2000	Failure to Respond
250.2100	Actions: Recommend Agency Action
250.2200	Recommend Legislation

AUTHORITY: Implementing Section 7.08 and authorized by Section 7.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1979, ch. 127, par. 1007.08 and 1007.09).

SOURCE: Adopted at 3 Ill. Reg. 34, p. 204, effective September 1, 1979; rules repealed, new rules adopted and codified at 4 Ill. Reg. 49, p. 166, effective December 1, 1980.

Section 250.100 Authority

The Committee will review all agency rules on a periodic basis by the subject of the rules. Each set of rules of each agency will be evaluated during the course of this review *at least once every five years*. This review is mandated by Section 7.08 of the Act.

Section 250.200 Relation to Other Reviews

The five-year review of all agency rules discussed in this part is in addition to the review of proposed rules of state agencies and other reviews of agency rules authorized by other provisions of the Act.

Section 250.300 Subject Categories

To insure that the Committee reviews *similar rules at the same time*, it will classify each set of rules in one of the subjects listed in Section 250.400 through 250.800. As new sets of rules are adopted, they will be classified into these subjects and the Committee will maintain a current listing of all of the rules under each subject.

Section 250.400 Schedule: First Year

In the first year of each five-year review cycle the Committee will review all of the rules classified in these subjects:

- a) Industry and Labor
 - 1) Agricultural Regulation
 - 2) Business Regulation
 - 3) Consumer Protection
 - 4) Labor Laws
 - 5) Regulation of Occupations

Section 250.500 Schedule: Second Year

In the second year of each five-year review cycle, the Committee will review all of the rules classified in these subjects:

- a) Education and Cultural Resources
 - 1) Special Education
 - 2) Vocational and Professional Education
- b) Financial Institutions
- c) Government Management
 - 1) State Buildings Construction and Maintenance
 - 2) State Travel
- d) Human Resources
 - 1) Grants for Medical Services
 - 2) Public Health
 - 3) State Adult Institutions
- e) Natural Resources
 - 1) Land Pollution Control
 - 2) Wildlife Management
- f) Public Utilities

Section 250.600 Schedule: Third Year

In the third year of each five-year review cycle, the Committee will review all of the rules classified in these subjects:

- a) Education and Cultural Resources
 - 1) Educational Grants and Scholarship Programs
 - 2) Cultural Resources
- b) Emergency Services
- c) Government Management

- 1) Elections
- 2) Records and Information Management
- 3) State Financial Management
- d) Human Resources
 - 1) Food Handling and Services
 - 2) Regulation of Social Services
- e) Natural Resources
 - 1) Parks and Recreation Management
 - 2) Public Water Supplies
- f) Transportation
 - 1) Railroad Regulation

Section 250.700 Schedule: Fourth Year

In the fourth year of each five-year review cycle, the Committee will review all of the rules classified in these subjects:

- a) Education and Cultural Resources
 - 1) Higher Education
 - 2) Elementary and Secondary Education
- b) Government Management
 - 1) Government Purchasing
 - 2) Personnel and Merit Systems
 - 3) Retirement Systems
- c) Human Resources
 - 1) Grants for Social Services
 - 2) Regulation of Health Facilities
- d) Natural Resources
 - 1) Air Pollution Control
 - 2) Energy
- e) Transportation
 - 1) Airplane and Airport Regulation
 - 2) Traffic Safety

Section 250.800 Schedule: Fifth Year

In the fifth year of each five-year review cycle, the Committee will review all of the rules classified in these subjects:

- a) Education and Cultural Resources
 - 1) Educational Facilities and Safety

- b) Government Management
 - 1) Organizational and Rulemaking Rules
 - 2) State Revenue
- c) Human Resources
 - 1) Regulation of Health Professions
 - 2) Regulation of Medical Services
 - 3) State Juvenile Institutions
- d) Law Enforcement
- e) Natural Resources
 - 1) Water Resources and Pollution Control
- f) Transportation
 - 1) Highway Planning, Construction and Maintenance
 - 2) Trucking Industry Regulation

Section 250.900 Notice to Agencies

At the beginning of each year of the review, the Committee will notify each agency whose rules will be reviewed during that year. Such notification will include the following information:

- a) The specific sets of rules which are classified in the subject which will be reviewed.
- b) The location of such rules in the collection of the agency's rules which are on file with the Rules Division.
- c) The time period during which the Committee will be reviewing such rules.

Section 250.1000 Initial Questions

The Committee will request the agency to submit the following information on each set of rules being reviewed. The agency will be allowed at least 60 days to submit this information.

- a) A citation to the specific statute which authorizes each set of rules and the specific statute which each set of rules is implementing or interpreting.
- b) A list of the programs and organizational units of the agency which are related to each set of rules.
- c) An estimate of the cost to the State for operation of the agency programs related to each set of rules and for enforcement or monitoring of compliance with the rules.
- d) An estimate of the extent of compliance and non-compliance by the affected public with each set of rules, and the number and extent of variances permitted by the agency to each set of rules.
- e) An estimate of the effect of each set of rules on state revenue.
- f) An estimate of the economic effect on the persons and groups which are regulated by each set of rules.

- g) A discussion of the public need for the regulation provided by each set of rules. This discussion should include evidence of any harm that would result to the public health, welfare or safety, if the rules were repealed.

Section 250.1100 Staff Review

The staff of the Committee will review each set of rules. Such staff review will be based on the criteria in Section 250.1400. The staff may raise questions or problems as a result of its review and will discuss these questions or problems with the agency. The agency will be allowed at least 60 days to provide written responses to any questions raised.

Section 250.1200 Public Hearings

The Committee will hold one or more public hearings during the review of the rules in each subject to gather information and views from interested persons and groups, when it finds that such a hearing is necessary for a complete review of the rules. The Chairman of the Committee may designate a subcommittee for the purpose of holding such public hearings. The agenda of such hearings shall be published in the Register as provided in Section 7.02(c) of the Act. Each agency whose rules are the subject of a public hearing will be notified of the hearing. Testimony which is presented at such hearings will be considered by the Committee in its review of the rules as it relates to the criteria in Section 250.1400.

Section 250.1300 Grouping of Rules

The Committee may further group rules together by agency, or by subject to facilitate the conduct of the review or to report the findings to the Committee.

Section 250.1400 Criteria for Review

The Committee will consider these criteria in its review of each set of rules:

a) Substantive

- 1) Is there legal authority for each part of the rules?
- 2) Does each part of the rules comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?
- 3) Does each part of the rules comply with state and federal constitutions, state and federal law, and case law?
- 4) Do they include adequate standards for the exercise of each discretionary power which is discussed in the rules?

b) Propriety

- 1) Is there an adequate justification and rationale for the rules and for any regulation of the public embodied in the rules?
- 2) Has the agency reasonably considered the economic and budgetary effects of the rules as well as less costly alternatives?

- 3) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
- 4) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?
- c) Procedural
 - 1) Were the rules adopted in compliance with the Act?
 - 2) Were the rules adopted in compliance with the requirements of the Rules Division (see 1 Ill. Adm. Code 160)?
 - 3) Were the rules adopted in compliance with any additional requirements which have been imposed on the agency by state or federal law?
 - 4) Were the rules adopted in compliance with the agency's own rules for its rulemaking process?
 - 5) Has the agency been responsive to public comments which have been made on the rules and to related requests for rulemaking?
- d) Additional
 - 1) Has the agency shown that the rules are necessary? Has the agency shown that there is a public need for the regulation embodied in the rules?
 - 2) Are the rules accurate and current in relation to agency operations and programs?
 - 3) Are the rules free of overlaps and conflicts between requirements and between regulatory jurisdictions?

Section 250.1500 Staff Report; Agency Response

The staff will report the results of its review to the Committee. The staff report may include recommendations for any of the types of action listed in Section 250.1700. Such recommendations shall be only advisory to the Committee and shall not limit the Committee's power to take some other action. Each agency whose rules are being reviewed shall be given an opportunity to submit its views and comments on the staff report in writing prior to the hearing by the Committee.

Section 250.1600 Hearing on Staff Report

The Joint Committee shall hold a hearing on each staff report in its review of rules in a subject. Such a hearing may be conducted as part of other hearings of the Committee. The agenda of such a hearing will be published in the Register as provided in Section 7.02(c) of the Act. At the hearing the Committee will consider the rules and the staff report in relation to the criteria in Section 250.1400. Written or oral testimony by the agencies and testimony received at public hearings held as provided Section 250.1200 will also be considered.

Section 250.1700 Actions as Results of Review

In response to problems which are discovered in the rules as a result of its review, the Committee may take any of these types of actions:

- a) Object to specific rules which were reviewed. Such objections to rules shall be made as discussed in Section 250.1800.
- b) Recommend rulemaking or some other type of action by agencies. This type of action may include recommending changes in the rulemaking process which is followed by agencies or coordination of rulemaking between agencies. Such action shall be taken as discussed in Section 250.2100.
- c) Recommend further study of the problems by a legislative committee, commission or other unit.
- d) Draft specific legislation to correct the problem. Such legislation will be approved by a majority vote. It will then be introduced in either house of the General Assembly.

Section 250.1800 Actions: Objections

If the Committee finds that a rule or a set of rules does not meet one or more of the criteria in Section 250.1400, it will object to the rule as provided in Section 7.07 of the Act. In five working days after the day of the hearing the Committee will certify the fact of the objection to the agency. The form used for this purpose is shown in Illustration H. A statement of specific objections to the rule shall be included.

Section 250.1900 Agency Response to Objection

- a) The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections. The agency response should address each of the specific objections which are stated by the Committee. The agency response should be concise, but complete, and should clearly state the nature of the response and the rationale for the response. The response should be made on the form shown in Illustration I.
- b) The agency must respond to an objection by the Committee in one of the following ways:
 - 1) Amend the rule to meet all of the specific objections stated by the Committee. The agency should take action to begin the rulemaking which is necessary to respond in this way.
 - 2) Repeal the rule. The agency should state the specific objections of the Committee or other reasons which are the basis of the repeal. The agency should take action to begin the rulemaking which is necessary to respond in this way.
 - 3) Refuse to amend or repeal the rule. The agency should present in its response its reasons for refusing to amend or repeal the rule.

Section 250.2000 Failure to Respond

- a) Failure of an agency to respond to an objection to a rule within 90 days of the receipt of the objection shall be deemed to be a refusal to amend or repeal the rule.
- b) Failure of an agency to complete rulemaking which was started in response to an objection within 180 days of the notice of the rulemaking shall be deemed to be a refusal to amend or repeal the rule.

Section 250.2100 Actions: Recommend Agency Action

If the Committee finds that a set of rules raises problems which require new rulemaking or some other type of action by an agency the Committee will recommend such action to the agency. In five working days after the day of the hearing, the Committee will certify the fact of such recommendation to the agency. The form used for this purpose is shown in Illustration J. A statement of the specific recommended actions, the reasons for the recommendation and the date by which the agency should respond shall be included. The Committee will monitor whether agencies take the actions which it recommends as a result of its review. Agencies should inform the Committee of actions which are being taken in response to such recommendations.

Section 250.2200 Recommend Legislation

If an agency refuses to remedy an objection to a rule or set of rules, or fails to take recommended action, the Committee may draft legislation to address the problems. Such legislation will be approved by a majority vote. It will then be introduced in either house of the General Assembly.

TITLE 1: GENERAL PROVISIONS
CHAPTER II: JOINT COMMITTEE ON ADMINISTRATIVE RULES

PART 260
COMPLAINT REVIEWS OF EXISTING RULES

Section

260.100	Authority and Purpose
260.200	Definition of Complaint
260.300	Items to be Included in Complaints
260.400	Staff Review
260.500	Complaints About Policies Not in Rules
260.600	Staff Report
260.700	Criteria for Review
260.800	Hearing by the Committee
260.900	Objection
260.1000	Agency Response to Objection
260.1100	Failure to Respond
260.1200	Recommend Legislation
260.1300	Notice to Persons Making Complaint

ILLUSTRATION H Certification of Objection to Existing Rules

ILLUSTRATION I Agency Response to Joint Committee Objection to Existing Rules

ILLUSTRATION J Certification of Recommendation

AUTHORITY: Implementing Sections 7.04 and 7.07 and authorized by Section 7.09 of the Illinois Administrative Procedure Act (Ill. Rev. Stat. 1977, ch. 127, pars. 1007.04, 1007.07 and 1007.09).

SOURCE: Adopted at 3 Ill. Reg. 34, p. 219, effective August 24, 1979; rules repealed, new rules adopted and codified at 4 Ill. Reg. 49, p. 166, effective December 1, 1980; amended at 6 Ill. Reg. 9314, effective August 1, 1982.

Section 260.100 Authority and Purpose

The Committee will review rules of state agencies based on complaints received from interested persons or groups as provided in this part. This type of review of rules is authorized by Sections 7.04 and 7.07 of the Act. Review of rules by the Committee as provided in this part is in the nature of a legislative investigation and is not a prerequisite in any way for judicial review of rules.

Section 260.200 Definition of Complaint

For the purposes of this part, a complaint will consist of any written communication received by the Committee which raises questions which are related to the criteria in Section 260.700. Complaints may address one or more of the following:

- a) An existing rule of an agency.
- b) The failure of an agency to fully or properly enforce its rules.
- c) The absence of rules which are required by statute or are necessary for the proper conduct of an agency program or function.
- d) An agency policy which is applied generally, but is not embodied in the rules of the agency.

Section 260.300 Items to be Included in Complaints

- a) Complaints should be sent to the Director at this address:
Joint Committee on Administrative Rules
509 South Sixth Street, Room 500
Springfield, Illinois 62701
- b) Each complaint should include these items:
 - 1) A discussion of the issues involved.
 - 2) The names and addresses of the persons or groups making the complaint.
 - 3) The agency whose rules, policies, or practices are being questioned.
 - 4) The specific rule or set of rules involved.
 - 5) A description of the effect of the rules, policies or practices on the persons or groups making the complaint.
 - 6) A discussion of any additional facts necessary to understand the issues.
 - 7) A discussion of how the issues relate to the criteria in Section 260.700.

(Source: Amended at 6 Ill. Reg. 9314, effective August 1, 1982)

Section 260.400 Staff Review

The staff of the Committee will review each complaint. The staff may raise questions or problems as a result of its review and will discuss these questions or problems with the agency. Such staff review will be based on the criteria in Section 260.700. The staff will try to insure that the agency is aware of the substance of the complaint and the results of the staff review.

Section 260.500 Complaints About Policies Not in Rules

When a complaint is received which alleges that an agency has a policy which is not embodied in rules, the Committee will encourage the persons making the complaint to petition the agency as provided in Section 8 of the Act.

Section 260.600 Staff Report

The staff shall report the results of its review to the Committee. The staff report will present evidence of possible problems with the rules in relation to the criteria in Section 260.700. The report may include recommendations for action by the Committee. Such recommendations shall be only advisory to the Committee and shall not limit the Committee's power to take some other action.

Section 260.700 Criteria for Review

The Committee will consider these criteria in its review of rules based on a complaint:

- a) Substantive
 - 1) Is there legal authority for each part of the rules?
 - 2) Does each part of the rules comply with the statutory authority and legislative intent on which it is based, or which it is implementing or interpreting?

- 3) Does each part of the rules comply with state and federal constitutions, state and federal law, and case law?
 - 4) Do they include adequate standards for the exercise of each discretionary power which is discussed in the rules?
- b) Propriety
- 1) Is there an adequate justification and rationale for the rules and for any regulation of the public embodied in the rules?
 - 2) Has the agency reasonably considered the economic and budgetary effects of the rules as well as less costly alternatives?
 - 3) Is the language of the rules simple and clear, so that the rules can be understood by the persons and groups which they will affect?
 - 4) Are the rules free of serious technical errors, redundancies and grammatical or typographical errors, which could affect the meaning of the rules?
- c) Procedural
- 1) Were the rules adopted in compliance with the Act?
 - 2) Were the rules adopted in compliance with the requirements of the Rules Division (see 1 Ill. Adm. Code 160)?
 - 3) Were the rules adopted in compliance with any additional requirements which have been imposed on the agency by state or federal law?
 - 4) Were the rules adopted in compliance with the agency's own rules for its rulemaking process?
 - 5) Has the agency been responsive to public comments which have been made on the rules and to related requests for rulemaking?
- d) Additional
- 1) Has the agency shown that the rules are necessary? Has the agency shown that there is a public need for the regulation embodied in the rules?
 - 2) Are the rules accurate and current in relation to agency operations and programs?
 - 3) Are the rules free of overlaps and conflicts between requirements and between regulatory jurisdictions?

Section 260.800 Hearing by the Committee

Any one of the officers of the Committee may place a complaint on the agenda of the Committee to consider the rules. Such action will be based on evidence of possible problems with the rules in relation to the criteria in Section 260.700. A complaint will not be placed on the agenda if the officers find that the same issues have been previously considered by the Committee, unless the complaint reveals substantial information which was not available to the Committee at that time. At the hearing

the persons making the complaint and the agency will be allowed to present their views. If the Committee finds that other persons or groups are directly affected by the rule, such persons or groups will also be allowed to present their views orally or in writing.

Section 260.900 Objection

If the Committee finds that a rule which is the subject of a complaint does not meet one or more of the criteria in Section 260.700, it will object to the rule as provided in Section 7.07 of the Act. In five working days after the day of the hearing the Committee will certify the fact of the objection to the agency. The form used for this purpose is shown in Illustration H. A statement of specific objections to the rule shall be included.

Section 260.1000 Agency Response to Objection

- a) The agency should respond to an objection which is issued by the Committee within 90 days after it receives the statement of specific objections. The agency response should address each of the specific objections which are stated by the Committee. The agency response should be concise, but complete, and should clearly state the nature of the response and the rationale for the response. The response should be made on the form shown in Illustration I.
- b) The agency must respond to an objection by the Committee in one of the following ways:
 - 1) Amend the rule to meet all of the specific objections stated by the Committee. The agency should take action to begin the rulemaking which is necessary to respond in this way.
 - 2) Repeal the rule. The agency should state the specific objections of the Committee or other reasons which are the basis of the repeal. The agency should take action to begin the rulemaking which is necessary to respond in this way.
 - 3) Refuse to amend or repeal the rule. The agency should present in its response its reasons for refusing to amend or repeal the rule.

Section 260.1100 Failure to Respond

- a) Failure of an agency to respond to an objection to a rule within 90 days of the receipt of the objection shall be deemed to be a refusal to amend or repeal the rule.
- b) Failure of an agency to complete rulemaking which was started in response to an objection within 180 days of the notice of the rulemaking shall be deemed to be a refusal to amend or repeal the rule.

Section 260.1200 Recommend Legislation

If an agency refuses to remedy an objection to a rule or set of rules, the Committee may draft legislation to address the problems. Such legislation will be approved by a majority vote. It will then be introduced in either house of the General Assembly.

Section 260.1300 Notice to Persons Making Complaint

The Director will try to insure that the persons or groups making the complaint are aware of the result of the Committee review and the nature of the agency response.

Section 260.ILLUSTRATION H Certification of Objection to Existing Rules

The Joint Committee on Administrative Rules hereby certifies that, pursuant to Sections 7.04 and 7.07 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules objected on ____ (Date) to the ____ (Name of Agency)'s rules entitled or concerning ____ (Title or Subject of Rules) which appear at ____ (Page or Location Identification) in the agency's rules.

A statement of the specific objections of the Joint Committee accompanies this certification.

Please take notice that failure to respond to this objection within 90 days, or failure to complete rulemaking initiated in response to this objection within 180 days of the receipt of this Certification of Objection shall constitute a refusal to remedy the objection.

Certified ____ (Date).

(Signature)

(By: _____)

(Signature)

(Typewritten Name)

(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and sworn to before me this ____ (Date) day of ____ (Month), 19 ____ (Year).

Notary Public

(See Sections 250.1800 and 260.900)

Section 260.ILLUSTRATION I Agency Response to Joint Committee Objection to Existing Rules

Date: _____

Agency: _____

Title and Subject of Rule: _____

Response (Check One): _____

Initiate rulemaking to repeal the rule(s) to meet the Joint Committee's objection

Initiate rulemaking to amend the rule(s) to meet the Joint Committee's objection

Refusal to initiate rulemaking to remedy the Joint Committee's objection

If rulemaking will be initiated, date notice of proposed rulemaking was, or is expected to be, published in the Illinois Register: _____

Agency Response to Specific Joint Committee Objections:

(Respond to each of the specific objections raised by the Joint Committee, indicating clearly the intended action of the agency in response to each objection and the rationale for such response. Use Additional pages as necessary.)

Signature of Agency Official

(See Sections 250.1900 and 260.1000)

Section 260.ILLUSTRATION J Certification of Recommendation

The Joint Committee on Administrative Rules hereby certifies that, on ____ (Date), pursuant to Section 7.04(3), 7.04(1) and 7.08 of the Illinois Administrative Procedure Act, as amended, the Joint Committee on Administrative Rules as a result of its review of rules entitled or concerning ____ (Title or Subject of Rules) recommended rulemaking or other administrative action by ____ (Name of Agency).

A statement of the specific recommendation of the Joint Committee and reasons for the recommendation accompanies this certification.

Please take notice that failure to act to implement this recommendation within reasonable time shall be considered by the Joint Committee as a refusal to remedy the situation.

Certified ____ (Date)

(Signature)

(By: _____)

(Signature)

(Typewritten Name)

(Typewritten Name)

Chairman

Joint Committee on Administrative Rules

Subscribed and sworn to before me this ____ (Date) of ____ (Month), 19 ____ (Year).

Notary Public

(See Section 250.2100)

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